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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 470

DANIEL F. RICE, JOSEPH J. RICE, ET AL., ETC.,
Petitioners,

vs.

GREAT LAKES ELEVATOR CORPORATION, ET AL.,
Respondents.

No. 472

ILLINOIS COMMERCE COMMISSION, ET AL., ETC.,
Petitioner,

vs.

GREAT LAKES ELEVATOR CORPORATION, ET AL.,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS.

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ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS.

Opinions Below.

The District Court filed a memorandum opinion which has not been reported (R. 75).* The opinion of the Circuit Court of Appeals (R. 87) is reported in 156 F. 2d 33.

* Record references refer to pages in the Transcript of Record printed on January 6, 1947, pursuant to direction of the Clerk of the Supreme Court.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on June 7, 1946 (R. 107). The Petitions for Writs of Certiorari of Rice Petitioner and the Illinois Commerce Commission were filed on September 6, 1946, and both were granted on October 21, 1946 (R. 111). The jurisdiction of this court is invoked under Section 240(a) of the Judicial Code, as amended (28 U. S. C., § 347).

Questions Presented.

The essential question for decision is whether the United States, by the enactment of the United States Warehouse Act, has so occupied and pre-empted the field of regulation of grain warehouses licensed under that Act as to deprive the Illinois Commerce Commission of jurisdiction to regulate such warehouses with respect to the matters complained of by Rice Petitioner.

We are concerned in the instant case with only the regulatory matters as to which it is sought to invoke the powers of the Illinois Commerce Commission, and we therefore submit that the Specification of Errors urged by Rice Petitioner (Brief pp. 6-7) does not accurately indicate the issues before this court. Thus, with reference to Specification 1(d), the Circuit Court of Appeals did not, as there indicated, hold the Illinois constitutional prohibition against a warehouseman storing his own grain *invalid* but merely held that it was *inapplicable* to a warehouseman licensed under the federal act. Likewise, with reference to Specification 3, we believe that a careful consideration of the opinion of the Circuit Court of Appeals discloses that its holding precluding state regulation of federally licensed warehousemen was limited to the matters complained of in the Rice complaint filed before

the Commission (R. 103-4) and was not an absolute holding completely exempting such warehousemen from all state regulation.*

The Illinois Commerce Commission, in its Petition for Certiorari and brief in support thereof,† also raises certain procedural questions and now urges only two of several such objections made by that Petitioner in the Circuit Court of Appeals which present the following questions:

(1) Whether under the Johnson Act of May 4, 1934, amending Section 24(1) of the Judicial Code (28 U. S. C., §41(1)) the District Court had jurisdiction to entertain the Complaint in the instant case;

(2) Whether the District Court erred in exercising equitable jurisdiction and should have required Respondents to further pursue their remedies under state law.

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* This is apparent from the court's reference (155 F. 2d, p. 38, R. 96) to *Bacon Grain Co.* v. *City of Chicago*, 325 Ill. App. 245, 253, 255, 59 N. E. 2d 689 (1945) which sustained a local police power measure designed for protection against fires and explosions as applied to federally licensed warehouses in Chicago.

† We understand that this brief is to stand as that Petitioner's brief on the merits.

Statutes Involved.

The principal federal statute concerned in this case is the United States Warehouse Act (7 U. S. C., § 241, *et seq.*). This Act together with the regulations* (7 C. F. R. § 102, *et seq.*) promulgated by the Secretary of Agriculture pursuant to Sec. 28 of the Act are attached to this brief for the court's convenience. Section 5(a) (7) of the Commodity Exchange Act (7 U. S. C. § 7(a) (7)) is also involved and appears in Appendix A, Rice Petitioner's brief, p. 80.

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* Pursuant to provisions of The Administrative Procedure Act (Public Law 404, 79th Cong., 60 Stat. 237, 5 U. S. C. § 1001, *et seq.*), these regulations are referred to as follows in the publication of the organization, and rules and regulations of the Department of Agriculture in 11 Fed. Register No. 177, Part II, Sec. 2, Sept. 11, 1946:

> "§ 2328.21. *Warehouses.* The [Marketing Facilities] Branch administers the United States Warehouse Act (7 U. S. C. 241-273) and the regulations of the Secretary issued pursuant thereto (7 C. F. R., Parts 101-114 and 151). The procedure for securing licenses under the Warehouse Act and for the suspension or revocation of such licenses is set out in said regulations. The Branch also cooperates with the warehousing trade, and State and Federal agencies in developing and promoting sound and improved warehousing methods and financial structures."

STATEMENT OF THE CASE.

The record consists solely of pleadings and affidavits. Rice Petitioner's Statement of the Case fails, however, to adequately summarize the allegations of the Complaint in the District Court (R. 1) and makes no reference to the affidavits filed in support of Respondents' motion for a preliminary injunction (R. 26). We, therefore, deem it necessary to supplement that Statement with certain facts appearing in the record.

The Complaint.

Jurisdiction of the District Court is invoked on the ground that the controversy arose under the constitution and laws of the United States, and, in particular, the United States Warehouse Act, the Commodity Exchange Act, and the commerce clause of the Constitution (Art. I, Sec. 8, Cl. 3) (R. 2). Each Respondent is engaged in the business of public storage of grain in interstate commerce pursuant to license duly issued by the Secretary of Agriculture under the United States Warehouse Act in accordance with a schedule of rates, charges and practices duly filed with said Secretary as required by law, and each, as the holder of such license, is subject to said Act and regulations thereunder (R. 2-3).

Chicago is the world's largest grain market. For the year ended December 31, 1943, approximately two billion bushels of grain were shipped into and out of that market both by rail and water, from and to states other than Illinois. Over 90% of the trade in grain futures contracts in the United States is transacted on the Chicago Board of Trade, a corporation which has been designated a

contract market by the Secretary under the Commodity Exchange Act. Under that Act futures contracts on the Board of Trade and other contract markets may be satisfied by offsetting settlements between the contracting parties, by delivery in kind of the grain involved in the contract, or by the delivery of valid negotiable warehouse receipts of certain characteristics, including receipts issued under the United States Warehouse Act. The warehouse receipts issued to Respondents are issued under, and comply in all respects with that Act, and are in general use upon the said Board of Trade in satisfaction of futures contracts, and as such are instruments of interstate commerce (R. 4).

Respondents, on August 30, 1944, filed with the Illinois Commerce Commission their joint motion to dismiss the Rice complaint invoking before the Commission the regulatory laws of Illinois here in controversy in its entirety or, in the alternative, each of the separate charging paragraphs thereof, upon the ground that the subject matter of the Rice complaint was beyond the jurisdiction of the Commission and was exclusively within the jurisdiction of the United States Government by reason of the commerce clause of the Constitution, the United States Warehouse Act, and the Commodity Exchange Act (R. 5, 22). On October 10, 1944, the Commission entered its order denying the motion in its entirety, and Respondents alleged that the Commission in so doing illegally usurped jurisdiction to regulate their warehouses, which, by the statutes of the United States and the regulations thereunder, were subject to sole control by the Federal Government in the particulars complained of in the Rice complaint (R. 5).

Each Respondent (except Great Lakes Elevator Corporation) is engaged in business as an owner and merchandiser of grain and regularly stores, for interstate

commerce, grain owned by it (as well as that of others) in its warehouse or warehouses; although this right is permitted by the United States Warehouse Act and regulations thereunder, under the Constitution of the State of Illinois as construed by the Illinois Supreme Court, it is illegal for a public warehouseman to store his own grain in a public warehouse operated by him. Respondents issue to themselves negotiable warehouse receipts for grain, in form prescribed by the United States Warehouse Act, representing in the aggregate many millions of dollars annually, and such receipts represent grain belonging to the owners of such warehouses. Such receipts are used by Respondents for the purpose of transferring title to such grain in sales to others and also as collateral for commercial loans obtained from banks. Such receipts are also used by others for a similar purpose. Many of such warehouse receipts are outstanding and have been pledged as collateral for such loans. The Illinois law, if applicable, would make the storing of such grain illegal and would seriously impair the value of such warehouse receipts in commercial transactions (R. 6-7).

A hearing by the Commission on the Rice complaint would have the immediate effect of creating a cloud upon such warehouse receipts outstanding or to be issued and Respondents as well as the public would thereby be subjected to irreparable damages (R. 7). Further allegations of irreparable injury were set forth on the ground that Respondents would be subjected to fine and imprisonment for failure to take out a state license under the Illinois law, and to multiplicity of actions, and that the Commission by its refusal to dismiss the Rice complaint has decided that Respondents were subject to the laws of the State of Illinois and the penalties provided for violations thereof (R. 8-9).

It was further stated that the October 10, 1944 order of

the Commission was invalid and that any proceedings pursuant thereto would be futile and would entail protracted hearings and substantial expenditures for necessary costs, and would thereby result in irreparable damage (R. 10).

Motion for Preliminary Injunction and Affidavits in Support Thereof.

Respondents moved for a preliminary injunction and in support thereof filed affidavits (R. 49-62) showing the magnitude and national scope of their business.

The affidavits recited the issuance by each of them of warehouse receipts on forms furnished by the Department of Agriculture, which state on their face that the grain received by each warehouseman was "for storage in the course of interstate or foreign commerce." The affidavits further disclosed the amount, for stated periods, of grain stored in each warehouse, including several millions of bushels owned by the warehouseman against which receipts were outstanding, and also show that each had filed with the Secretary of Agriculture schedules of rates and charges for the storage and handling of grain and that each was regularly inspected and examined by representatives of the Department of Agriculture.

SUMMARY OF ARGUMENT.

I.

The District Court had jurisdiction to entertain Respondents' Complaint and to grant the injunctive relief sought by Respondents. The Johnson Act restricting jurisdiction of the District Court, is not applicable as the Complaint is based on the theory that federal laws have superseded state laws, and no question of the constitutionality of state laws is involved. In view of the direct allegations showing the inadequacy of legal remedies and irreparable injury, the Complaint presents a clear case for equitable relief in the District Court.

II.

Respondents' warehouses are instrumentalities of interstate commerce. The fact that states may constitutionally regulate public warehouses is not determinative of the issues before the court as to whether Congress by enactment of the United States Warehouse Act, as amended in 1931, precludes the state regulation sought to be invoked.

III.

The 1931 amendments to the United States Warehouse Act clearly indicate that Congress did not intend that federally licensed warehouses be subject to any scheme or system of state regulation. It is immaterial, if such be the case, that applicable federal laws may not have expressly or completely dealt with all the phases of regulation in issue. The cases relied upon by Petitioners involve federal regulation limited in scope and not entailing a wide variety of federal controls as is present in the instant case. The

United States Warehouse Act is much broader in scope than claimed by Petitioners, but even if considered merely as a "Warehouse Receipt" law, state regulation of federally licensed warehouses would defeat its admitted purposes.

IV.

The United States Warehouse Act established a uniform system of warehousing of agricultural products under federal control. To grant the relief sought in the Rice complaint before the Illinois Commerce Commission would prevent the accomplishment of this purpose. The principal charges of the Rice complaint are covered by federal law and regulations which as regards federally licensed warehouses, foreclose license requirements of state laws, and preclude state regulation as to rates and charges, undue discrimination, improper mixture of grain and undue delay in loading, the propriety of warehousemen storing grain in their own warehouses, the safety and adequacy of elevators, the efficient storage and handling of grain, and the abandonment of service. While Congress did not expressly deal with the issuance of securities and other corporate transactions, it is obvious that it would unduly hamper the administration of the Federal Act to subject federally licensed warehouses to state laws in this regard. Even without consideration of the clear provisions of the 1931 amendments compelling federal supersedure of the state regulation in question a comparison of the charges in the Rice complaint with the provisions of the applicable federal laws and regulations, clearly discloses that enforcement of state law in the instant case would involve many points of conflict with federal law and plainly infringe its policy.

ARGUMENT.

I.

THE DISTRICT COURT HAD JURISDICTION TO ENTERTAIN THE COMPLAINT HEREIN.

Rice Petitioner (Case No. 470) has not on this appeal made any objection to the jurisdiction of the District Court. However, the Attorney General of the State of Illinois in the Petition of the Illinois Commerce Commission for Writ of Certiorari (Case No. 472) persists in urging two of the several objections made below with respect to the jurisdiction of the District Court. His principal contention now is that the Johnson Act of May 14, 1934, c. 283, § 1, 48 Stat. 775, 28 U. S. C. § 41 (1) (quoted in full at p. 12 of the Petition of the Illinois Commerce Commission) deprived the District Court of jurisdiction to grant the injunctive relief sought in the instant case. It will be noted by the language of this restrictive statute it is only applicable "where jurisdiction is based solely upon the ground of diversity of citizenship, or the repugnance of such order to the Constitution of the United States * * *". Inasmuch as jurisdiction in the complaint is predicated solely on the theory that the federal laws in question have superseded the Illinois laws sought to be invoked and is not based on diversity of citizenship or grounded upon the repugnance of the order of the Illinois Commerce Commission to the Federal Constitution, this statute is clearly inapplicable. As stated by the Circuit Court of Appeals (156 F. 2d, p. 36, R. 91-92) "if the plaintiffs had succeeded below or if they succeed in this court, it would not mean that any provision of the Illinois

law or Constitution has been invalidated. It would only mean that such law or constitutional provision is inapplicable to a situation such as the instant one."

In *Cloverleaf Butter Co.* v. *Patterson,* 315 U. S. 148, as in the instant case, it was alleged in the complaint that a federal statute had superseded state laws and it was contended that a three judge court should have been convened in accordance with § 266 of the Judicial Code (28 U. S. C. § 380). In rejecting this contention the Circuit Court of Appeals, 116 F. 2d 227, 230, stated with reference to the complaint that "it did not attack the constitutionality of the Alabama statutes, it affirmed their constitutionality". This Court considered the case on the merits without reference to the jurisdictional question. To the same effect, see *Ex Parte Bransford,* 310 U. S. 354, 358; *Ex Parte Buder,* 271 U. S. 461; *Ex Parte Hobbs,* 280 U. S. 168; *Query* v. *U. S.,* 316 U. S. 486, 488, 489; *Lemke* v. *Farmers Grain Co.,* 258 U. S. 50, 52-54, and *Case* v. *Bowles,* 327 U. S. 92.

The Attorney General of Illinois further, in questioning the exercise of equity jurisdiction by the District Court, now relies on *Natural Gas Pipe Line Co.* v. *Slattery,* 302 U. S. 300 (Illinois Commerce Commission Petition, p. 14). In that case the Illinois Commerce Commission investigating the rates charged by a public utility operating solely in Illinois, entered an order requiring the plaintiff, an affiliated company, to produce certain records. Plaintiff did not ask the Commission to modify or set aside such order and immediately instituted an action to enjoin the Commission from proceeding. Unlike the instant case, the Commission was not given an opportunity to act thereon, and the injunction action was held premature. In the case at bar the Commission was afforded an opportunity to pass upon Respondents' objections to its jurisdiction

when they moved to dismiss the complaint upon the identical grounds asserted by them in the District Court proceeding, namely, lack of power in the Commission.

In view of the direct and specific allegations in the instant case showing the inadequacies of legal remedies and the various forms of irreparable injury to which Respondents would be subjected,* it is clear that the complaint presents a traditional case for equitable relief which this court has approved in analogous situations. See, *Public Utilities Commission of Ohio* v. *United Fuel Gas Co.*, 317 U. S. 456, sustaining federal equity jurisdiction in a case in which it was claimed that a State Commission was without authority to fix rates of utilities subject to regulation by the Federal Power Commission.

II.

RESPONDENTS' WAREHOUSES ARE INSTRUMENTALITIES OF INTERSTATE COMMERCE.

It is alleged in the Complaint (Para. III, R. 3) that Respondents are engaged "in the business of the public storage of grain for hire for interstate commerce", and detailed affidavits were filed confirming this allegation (R. 49-62). Moreover, if need be, a court could properly

* (1) Threatened loss of the right of Plaintiffs to deal in grain stored in their own warehouses (Complaint, Para. X, R. 6); (2) threatened loss of the right to conduct their business free from interference by the Illinois Commerce Commission (Complaint, Para. X, R. 7); (3) threatened impairment of the validity and negotiability of millions of dollars of warehouse receipts now outstanding and to be issued (Complaint, Para. XI, R. 7); (4) likelihood of substantial penalties for noncompliance with Illinois laws (Complaint, Para. XII, R. 8); (5) likelihood of prosecution and multiplicity of suits (Complaint, Para. XIII, R. 9); and (6) heavy expenditures in connection with protracted and involved hearings before the Illinois Commerce Commission (Complaint, Para. XIV, R. 10).

take judicial notice of the important part that grain elevators situated in Chicago play in the vast interstate and international flow of grain passing through the Chicago market. (Cf. *Girard* v. *Kimbell Milling Co.*, 116 F. 2d 999, 1001 (C. C. A. 5).) Although Petitioners do not expressly raise any question on this score, and concede (Rice Brief, p. 45) that Congress has the power to exempt federal warehouses from all state laws, counsel state that Respondents' warehouses "are * * * matters of local or domestic concern * * *" (Rice Brief, p. 12.) In so arguing they rely on *Munn* v. *Illinois*, 94 U. S. 113, and *Davies Warehouse Company* v. *Bowles*, 321 U. S. 144. We do not question the holding in those cases to the effect that grain warehouses are affected with a public interest and therefore may be subject to state regulation. However, it is inconceivable that counsel would, at this late date, urge that Respondents' federally licensed warehouses are purely matters of local and domestic concern as it is well settled that such warehouses and similar facilities are engaged in interstate commerce. See, *Shafer* v. *Farmers Grain Co.*, 268 U. S. 189 and *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50, 54 (North Dakota grain elevators); *Stafford* v. *Wallace*, 258 U. S. 495, following *Swift & Co.* v. *U. S.*, 196 U. S. 375 (commissionmen and livestock dealers in the Chicago Stock Yards); *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, sustaining the validity of regulation of the Chicago Board of Trade under the Grain Futures Act); *Wickard* v. *Filburn*, 317 U. S. 111 (producer of wheat); *Currin* v. *Wallace*, 306 U. S. 1 (tobacco auctioneers and warehousemen); *Mulford* v. *Smith*, 307 U. S. 38 (tobacco growers).

Since Respondents are unquestionably engaged in interstate commerce, and their warehouses are instrumentalities of interstate commerce just as railroads and other media of

interstate transportation and communication, the fact that states may have for a long time subjected public warehousemen to local regulation is not determinative of the precise issue in this case as to whether Congress intended after enactment of the United States Warehouse Act, as amended in 1931, to permit dual regulation of federally licensed warehouses.

III.

THE 1931 AMENDMENTS TO THE UNITED STATES WAREHOUSE ACT SHOW CONCLUSIVELY THAT FEDERALLY LICENSED WAREHOUSES WERE NOT TO BE SUBJECT TO ANY SYSTEM OF STATE REGULATION.

The prime purpose and objective of the United States Warehouse Act as originally enacted in 1916 was to establish a uniform system of warehousing under federal control. As stated by Representative Lever, sponsor of the bill (Vol. 53 Cong. Rec., Pt. 6, pp. 5924, *et seq.*, see also p. 7085, Appendix pp. 61, 63-64):

> "A Federal warehouse law insures beyond doubt uniformity in character of warehouses, uniformity in methods of inspection, uniformity in methods of weighing and grading, uniformity in the standard of measurement—grade—and above all, and more important than all, such a system provides for a uniform warehouse receipt, or credit instrument, for the same product in every State in the Union."

See also to the same effect, U. S. Dept. of Agriculture Misc. Circular 51 (Jan. 1926) summarizing the aims and

objectives of the Act as set forth in H. Report 60, 64th Cong. 1st Sess., Jan. 21, 1916.*

After some years of experience under the 1916 Act, it was found that attainment of the objectives of the Act was not possible because of the provisions of Section 29 which subordinated federal regulation to state authority.

Prior to its amendment in 1931, Section 29 of the Act read as follows:

> "Nothing in this chapter shall be construed to conflict or to authorize any conflict with or in any way to impair or limit the effect or operation of the laws of any state relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers; but the Secetary of Agriculture is authorized to cooperate with such officials as are charged with the

* It was stated at the beginning of this report (Vol. 53, Cong. Rec., Part 7, p. 7062, *et seq.*):

> "This bill provides for the inauguration of a uniform system of warehousing under Federal supervision • • •.
>
> "The outbreak of the European war emphasized the fact that the farm marketing machinery of this country is seriously weak, insufficient, and inadequate • • • a condition which already had been more or less recognized by students of farm economics. From a very thorough study of our system of marketing there will appear: (1) A lack of adequate storage facilities; (2) a lack of proper control and regulation of such storage systems as exist; (3) an absence of uniformity in their methods of operation and the form of receipts issued; (4) a multiplicity of standards for grading and classification, or in some cases an entire absence of such standards for grading and classification; (5) a lack of disinterested graders, classifiers, and weighers; (6) a lack of proper relationship between the storage and banking systems of the country.
>
> "The inauguration under this bill of a permissive system of warehouses licensed and bonded under authority of the Federal Government for the storage of staple and nonperishable agricultural products upon which uniform receipts may be issued, the weight and grades of the products specified therein having been previously determined by licensed weighers and graders in accordance with Government standards, *would go far in the direction of standardizing warehouse construction, storage conditions, insurance, accounting, financing, and the handling and marketing of farm products.*" (Italics ours.)

> enforcement of such state laws in such States and through such cooperation to secure the enforcement of the provisions of this chapter. * * *" (7 U. S. C. § 269)

In *Independent Gin & Warehouse Co.* v. *Dunwoody*, 40 F. 2nd 1 (C. C. A. 5, 1930), plaintiff cotton warehousemen licensed under the United States Warehouse Act sought to enjoin the enforcement of an Alabama law providing for licensing and regulating the business in which they were engaged, alleging that enforcement of such provisions would be an unwarranted interference with interstate commerce. The court denied the injunction on the ground that Section 29 of the United States Warehouse Act as then in force did not indicate the intention of Congress to exclude the jurisdiction of the states in regulating agricultural warehouses.

Section 29 was amended in 1931 to read as follows:

> "*In the discretion*[1] of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehousemen, weighers, graders, inspectors, samplers or classifiers; *but the power, jurisdiction and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive* with respect to all persons securing a license hereunder so long as said license remains in effect. * * *" (Italics showing amendments ours.)

This amendment* by its very terms clearly manifests the intention of Congress to vest jurisdiction of federally licensed warehouses in the Secretary to the exclusion of the state authorities. Coming as it did after the decision

[1] These three italicized words were added in the 1931 Amendments, again demonstrating the primacy of federal control. Unless federal law and regulations were paramount, it is obvious that there would be no field in which the Secretary could exercise any discretion.

* For instances in which a statute vesting "exclusive" jurisdiction in administrative bodies has been given a literal meaning, see *Myers* v. *Bethlehem Ship Building Corp.*, 303 U. S. 41, *Macauley* v. *Waterman Steamship Corp.*, 327 U. S. 540.

in the *Dunwoody* case, it is clear that Congress intended to avoid a system of dual control with its resulting confusion and inconsistencies. As the Circuit Court of Appeals stated, (R. 97, 156 F. 2d 33, 39), unless this was the intent of Congress "there was no real purpose for the Amendments of 1931."

That the specific purpose of the amendments was to avoid dual regulation is borne out by the reports of the House and Senate Committees on the 1931 amendment, which reports appear on Appendix pp. 60, 64.

In the House Report (H. Rept. 4, 71st Cong. 1st Sess. p. 4) it was stated: "Under Section 29 * * * of the law as at present, if the Federal Act in any way conflicts with the State law, the Federal law becomes subservient to the State law in so far as there is a conflict. The result is that the Federal law can be negatived by State legislation. * * * *To make the law accomplish the real purpose of Congress, it should be independent of any State legislation on the subject.*" (Italics ours.)

In the Senate Report (S. Rept. 1775, 71st Cong., 3rd Sess., p. 2) it was stated in referring to Sec. 29 of the Act as originally enacted: "The effect of this wording is to make the Federal act subservient to the State acts wherever there is a conflict. As might be expected there are conflicts between State laws and the Federal act. Since the law specifically makes the Federal act subservient to State laws in case of conflict, this feature militates against the full value of Federal warehouse receipts for collateral purposes. *The amendment proposed to this section would make the Federal act independent of State laws. In other words, it would place the Federal act on its own bottom.*" (Italics ours.)

This intention of Congress is also shown in the amendment to Section 6 of the United States Warehouse Act (7 U. S. C. § 247), which accompanied the amendment of Section 29. Prior to its amendment, Section 6 required, as a condition to securing a federal license, that each

licensee give a bond "to secure the faithful performance of his obligations as a warehouseman *under the laws of the State, district or territory* in which he is conducting such warehouse, as well as under the terms of this Act, and the rules and regulations prescribed hereunder * * *." The amendment, however, eliminated the requirement that the bond be conditioned upon *compliance with the laws of the State, district or territory in which the warehouse was conducting business*, and provided merely that the requirement that the bond be conditioned upon compliance with the Federal Act and regulations thereunder. That this change in Section 6 was also in furtherance of the new concept of Section 29 is borne out by the statement in the Senate Committee Report (S. Rept. 1775, 71st Cong., 3rd Sess., Appendix at p. 66) "Again this amendment to Section 6 naturally follows the amendment suggested to Section 29."

Pursuing this clear-cut policy of divesting state authorities of control, Congress in 1936 provided in Section 5a of the Commodity Exchange Act that contract markets, such as the Chicago Board of Trade, shall require that receipts issued under the United States Warehouse Act

> "* * * be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and *notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges* than under State law." (Italics ours.) 7 U. S. C. § 7a(7).

That the 1931 amendments had the effect of foreclosing state action in the instant case was definitely recognized in *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148 *infra*, p. 32). The court in footnote 5 (p. 155) cited *Merchants Exchange* v. *Missouri*, 248 U. S. 365, as an example

of an instance where the state was free to legislate upon matters not preempted by the federal government. This case dealt with Section 29 of the United States Warehouse Act as it read prior to the 1931 amendment. The court then, in footnote 6 (p. 156) cited Section 29 as amended in 1931 as an illustration of the exercise by Congress of its power so as to supersede state regulation, and make federal regulation exclusive. As stated by the Circuit Court of Appeals (156 F. 2d p. 39, R. 97):

> "Thus we have the court in the same opinion [the *Cloverleaf* case] treating Section 29 before it was amended as an illustration of dual authority, and Section 29 after it was amended as providing for sole authority of the federal government."

In their endeavor to avoid the plain effect and meaning of Section 29, as amended, counsel cite (Rice Brief, p. 43) *U. S.* v. *Hastings*, 296 U. S. 188. In that case the court sustained a demurrer to an indictment for stealing products from a federally licensed warehouse because it was not alleged that the goods were stored for interstate or foreign commerce. Whether or not the Secretary of Agriculture had exclusive jurisdiction over federally licensed warehouses was not passed upon by the court. We submit that this case in no way justifies the narrow construction which counsel would seek to give the broad terms of the 1931 amendments.

The voluntary or permissive aspect of the licensing of federal warehouses which is emphasized by counsel (Rice Brief, p. 30) is of little import. By way of comparison, national bank charters are also permissive and voluntary but once having been organized as a national bank, immunity from state systems of regulation follows. The mere possibility that a national bank may be converted into a state bank does not in any manner detract from

the paramount authority of the federal government over the bank while enjoying federal status. This analogy to the National Banking Act was referred to in the Senate Report (S. Rept. 1775, 71st Cong. 3rd Sess., p. 2, Appendix, p. 67). So here, as long as the warehouseman holds a federal license, all inconsistent state regulation is precluded. No freedom from control is thereby created, as counsel insist (Rice Brief, p. 24). After the federal license is issued the warehouseman is under the jurisdiction of the Secretary of Agriculture, and regulation by a single authority follows in accordance with the clear intent of Congress. In considering this, the Circuit Court of Appeals said with reference to a federal licensee (p. 40, R. 98, 156 F. 2d):

> "• • • he is under the Act as definitely and certainly as though it was a mandatory requirement on his part. No vacuum is created, as defendants argue. Before he is issued a federal license he is under the control of the state, but after the federal license has been issued he is under the jurisdiction of the Secretary."*

In Re Farmers Cooperative Association, 8 N. W. 2d 557 (S. D. 1943), involves the exact question before this Court. Prior to 1935 the Association was licensed to operate a public warehouse by the Public Utilities Commission of South Dakota under state warehouse laws, similar to the Illinois statutes regulating warehouses. In 1935 the Association applied for and obtained a license under the United States Warehouse Act and did not comply with the state law. The Commission after a hearing found that the Association was operating in violation of state law, and entered an order requiring it to cease and desist from further operations as grain warehouseman.

* See, to the same effect, excerpt from Senate Report as to 1931 Amendments, (Appendix, pp. 66, 67) appearing in footnote to opinion below (156 F. 2d, p. 38, R. 95).

In holding this order improper, the Court stated the issues as follows (p. 559):

> "The central issue is two-fold. Does warehousing as conducted by the Cooperative fall within the reach of the power granted to Congress by the commerce clause of the Constitution? Article 1, § 8, clause 3. If so, did Congress intend to exert that power when it enacted the United States Warehouse Act?"

On the first issue, the Court finding that the business of the warehouse involved was local in character, and not a part of interstate commerce, nevertheless held that the business of such warehouse so affected interstate commerce that it fell within the reach of federal power.

In disposing of the contention that the State law could be enforced despite the enactment of the United States Warehouse Act, the Court stated (p. 562):

> "It is suggested that 'The principle is thoroughly established that the exercise by the state of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so "direct and positive" that the two acts cannot "be reconciled or consistently stand together"' (See *Kelly* v. *Washington* and cases cited, 302 U. S. 1, 58 S. Ct. 87, 92, 82 L. Ed. 3) is applicable here. We think not. *The collision between these acts is head on. It is but a question of which master the Cooperative must serve.* * * * We interpret this [the 1931 Amendment to Sec. 29] as a clear grant of discretionary power to the Secretary of Agriculture, to achieve the congressional aim either through cooperation with state officials in promoting state regulation, or by direct federal control. *When the latter course is followed both by reason of the terms of the act, and the paramount nature of federal power, the federal control displaces state control.*" (Italics ours.)

In view of the clear expression by Congress in the 1931 amendments referred to above it is immaterial, if such be

the case, that the federal laws may not have expressly or completely dealt with all phases of regulation now in issue. Since Congress has by the express language of the 1931 amendments preempted and occupied the field of the regulation of federal warehouses, state laws—whether co-extensive with, supplemental to, in aid of, or different from the federal act—are superseded and rendered inoperative. This principle has been enunciated by this Court in many cases. Thus, in *Prigg* v. *Commonwealth of Pennsylvania*, 41 U. S. (16 Pet.) 539, the Court stated (pp. 617-8):

> "For, if Congress have a constitutional power to regulate a particular subject and they do actually regulate it in a given manner, and in a certain form, it cannot be that the state legislatures have a right to interfere; and, as it were, by way of complement to the legislation of Congress, to prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose. *In such a case, the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any farther legislation to act upon the subject-matter. Its silence as to what it does not do, is as expressive of what its intention is as the direct provisions made by it* • • • *the will of Congress upon the whole subject is as clearly established by what it had not declared, as by what it has expressed.*" (Italics ours)

The *Prigg* case was followed in *Southern Ry. Co.* v. *R. R. Commission of Indiana*, 236 U. S. 439, where it was said, in invalidating an Indiana statute regulating railroad car equipment (p. 448):

> "The test, however, is not whether the state legislation is in conflict with the details of the Federal law or supplements it, but whether the State had any jurisdiction of a subject over which Congress had exerted its exclusive control."

In *Charleston and Western Carolina Railway Co.* v. *Varnville Furniture Co.*, 237 U. S. 597, the Court stated:

> "(p. 604.) It is suggested that the Act is in aid of interstate commerce. The state law was not contrived in aid of the policy of Congress, but to enforce a state policy differently conceived; and the fine of $50.00 is enough to constitute a burden * * * but that is immaterial. *When Congress has taken the particular subject-matter in hand coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go.*" (Italics ours.)

In *Napier* v. *Atlantic Coast Line R. R. Co.*, 272 U. S. 605, the Boiler Inspection Act regulating locomotive equipment was held to preclude State legislation requiring further and additional equipment. In so holding, the Court stated (pp. 612-3):

> "* * * The fact that the Commission has not seen fit to exercise its authority to the full extent conferred, has no bearing upon the construction of the Act delegating the power. We hold that state legislation is precluded, because the Boiler Inspection Act, as we construe it, was intended to occupy the field. The broad scope of the authority conferred upon the Commission leads to that conclusion. Because the standard set by the Commission must prevail, requirements by the States are precluded, however commendable or however different their purpose."

To the same effect, see *New York Central R. R. Co.* v. *Winfield*, 244 U. S. 147, 153-4, involving the Federal Employers Liability Act.

Applying the principle of the foregoing authorities to the instant case it will be seen that differences in the philosophy, technique, method of treatment or general scope of the state law will not save it from being superseded by the federal enactment in this case. Had Congress

desired to avoid supersedure inherent in the 1931 amendments, it would have done so in unmistakable terms.*

Counsel (Rice Brief, p. 27, *et seq.*), stress the point that the United States Warehouse Act "in nature, form and intent is essentially a Warehouse Receipt Act". In support of their contention that the Act is of limited scope, counsel refer to the Statement of Representative Lever, Sponsor of the 1916 Act, but in so doing have omitted significant portions of such statement. (See excerpts therefrom (53 Cong. Rec. Pt. 6, pp. 5924-5, also p. 7085, Appendix p. 61, *et seq.*) These together with the House Report (p. 16, *supra*) clearly disclose that the purposes and objectives of the Act were much broader than indicated by counsel and covered all phases of warehouse regulation and operation.

* Cf. *First Iowa Hydro-Elec. Coop.* v. *Federal Power Commission*, ... U. S. ..., 66 S. Ct. 906, 917, where in holding that it was not necessary to obtain a permit under state law for a project under the Federal Power Act, the Court considered Sec. 27 of that Act protecting state laws from supersedure as having reference only to proprietary interests in water rights, and stated:

> "This section therefore is thoroughly consistent with the integration rather than the duplication of federal and state jurisdictions under the Federal Power Act. It strengthens the argument that, in those fields where rights are not thus 'saved' to the states, Congress is willing to let the supersedure of the state laws by federal legislation take its natural course."

Cases Cited by Petitioners.

The decisions cited by counsel (Rice Brief, pp. 16-26) holding that state laws had not been superseded are readily distinguishable. These cases involve federal regulation limited in scope and not entailing a wide variety of controls found in a broad federal regulatory scheme such as is embodied in the United States Warehouse Act.

In *Townsend* v. *Yeomans*, 301 U. S. 441 (Rice Brief, p. 18), the question in issue was whether a Georgia statute fixing maximum fees for handling and selling tobacco conflicted with the Tobacco Inspection Act. The Court found no conflict because that Act was limited solely to inspection and grading of tobacco* and was not concerned with and did not touch upon the question of charges by the handlers of tobacco. The Court said (pp. 452-3):

> "* * * It (the Tobacco Inspection Act) did not undertake to regulate the charges of warehousemen or in any way to derogate from the existing state legislation upon that subject. It sought to aid tobacco growers by establishing and promoting the use of standards of classification and maintaining an official inspection service * * *."

Absent entirely in the federal statute involved in the *Townsend* case was the broad general regulatory system provided by the United States Warehouse Act and the regulations thereunder. Moreover, the warehousemen involved in that case did not hold a federal license. In emphasizing that the Tobacco Inspection Act was not intended to conflict with the state regulation there in question the Court pointed (page 454) to the provision of the Federal

* In *Currin* v. *Wallace*, 306 U. S. 1, 13, in referring to the *Townsend* case this court said: "But we found nothing in the federal act which undertook to regulate the charges of warehousemen and hence we concluded that Congress had restricted its requirements and left the States free to deal with the matters not covered by federal legislation and not inconsistent therewith."

Act authorizing the Secretary of Agriculture to co-operate with the states. That provision referred to was similar to Section 29 of the United States Warehouse Act *prior to its amendment in 1931.*

In *Kelly* v. *Washington*, 302 U. S. 1, 13-4 (Rice Brief, p. 16), the Federal Act did not cover the subject of inspection of hulls and machinery of vessels of the type involved —the inspection of which was provided for by state statute. The only question was whether Congress had occupied the field of inspection of vessels of the type involved by reason of legislation providing for such inspection as applied to *other* vessels. In contrast with the statutes involved in the *Kelly* case, the United States Warehouse Act and regulations thereunder deal specifically with the regulation of the same subject matter as do the state laws involved herein.

Petitioner also cites (Rice Brief, pp. 35, 37) *Union Brokerage Co.* v. *Jensen*, 322 U. S. 202. The Court held that the limited regulation by the Federal Act of the business of a customhouse broker did not deprive the state of the right to require a corporation engaged in that business to take out a license under the Foreign Corporation Act of that state. The Court said (p. 207):

> "* * * But the limited and defined control which federal authority has thus far seen fit to assert over customhouse brokers does not deny to Minnesota the power to subject Union to the same demand which it makes of all other foreign corporations seeking the facilities of Minnesota's courts. The federal requirements and this state requirement can move freely within the orbits of their respective purposes without impinging upon one another. The federal regulations are concerned solely with the relations of the customhouse broker to the United States and to the importer and exporter."

Again there is entirely absent from the statute in the *Jensen* case, as indicated by the above quotation, any broad general scheme of regulation of the business of customhouse brokers similar to that found in the United States Warehouse Act applied to warehousemen. It will also be noted that unlike the case at bar, the regulations of the agency administering the federal law had specifically provided for and recognized state requirements relative to doing business in such states.

Likewise, in the remaining cases relied upon by counsel, there was no conflict or inconsistency between the state statute and a comparable federal act. In *Terminal Railroad Association* v. *Brotherhood of Railroad Trainmen*, 318 U. S. 1 (Rice Brief, p. 20), none of the federal laws relied upon by the employer to invalidate an order of the Illinois Commerce Commission requiring it to provide cabooses for its employees dealt in any way with, and the Interstate Commerce Commission had not adopted any regulation as to, the use of the caboose cars on interstate trains in terminal areas. In *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740 (Rice Brief, p. 26), the Court specifically pointed out in sustaining the Wisconsin Employment Peace Act declaring certain conduct of employees an unfair labor practice (page 749), "Congress has not made such employe and union conduct as is involved in this case subject to regulation by the Federal Board." In *Savage* v. *Jones*, 225 U. S. 501 (Rice Brief, p. 17), the Court pointed out in sustaining a statute requiring complete disclosure of contents of food products in the face of a federal statute merely prohibiting misbranding did not in any way involve a conflict with the latter Act and could be upheld (p. 539) "without impairing in the slightest degree its operation and effect."

Petitioners (Rice Brief, p. 22) insist that the decision of the Circuit Court of Appeals will render ineffective

state regulation of warehouses under the state laws. However, as was clearly pointed out in the opinion below (156 F. 2d at p. 40, R. 98), state regulation is left unimpaired as to warehouses not licensed under federal law, and "no vacuum is created." Many warehousemen are not engaged in interstate commerce, and others, although eligible, have not elected to obtain a federal license. Such warehousemen are, of course, subject to state law. (See, R. 15 where it appears that two of the warehouses named in the Rice complaint did not hold federal licenses.)

Counsel further state (Rice Brief, p. 21):

> "The Circuit Court of Appeals in this case has erroneously assumed that a mere possibility of future conflict, even though none presently exists, warrants the invalidation of the state regulatory system. The respondents have not disclosed a single instance where the Secretary of Agriculture, who administers the federal acts here involved, has performed any of the regulatory functions at issue. Indeed, federal statutes do not empower him to perform such functions."

This statement is without basis, and is contrary to the record (R. 51, 53, 59, 62). As stated in the opinion below (156 F. 2d, p. 36, R. 91):

> "* * * each of the plaintiffs has filed with the secretary schedules of rates and charges for the storage and handling of grain, and that each is regularly inspected and examined by representatives of the United States Department of Agriculture."

Such statement also overlooks the fact that the Secretary of Agriculture pursuant to Sec. 28 of the Act has adopted comprehensive regulations governing the operation of federally licensed warehouses which were in force at all times here in question. (7 C. F. R. § 102, *et seq.*) Counsel's citation (Rice Brief, p. 20) of *Welch Co.* v. *New Hampshire*, 306 U. S. 79, to the effect that supersedure of state law pursuant to federal enactment does not take place until the

agency charged with its enforcement acts is therefore clearly inapplicable. In that case, the regulations of the Interstate Commerce Commission under the Motor Carrier Act were not to become effective until more than a year after the violation of state law occurred.

Counsel (Rice Brief, pp. 33-34) emphasize the fact that the United States Warehouse Act lacks the usual provisions found in statutes regulating utilities, particularly with respect to hearings, findings and judicial review. This argument overlooks entirely the provisions of The Administrative Procedure Act* approved June 11, 1946 (Public Law 404, 79th Cong., 60 Stat. 237, 5 U. S. C. § 1001, *et seq.*), which fully covers all these matters: Sec. 7 (hearings), Sec. 8 (decisions), Sec. 9 (imposing requirement for hearings and decisions as provided in Sections 7 and 8 in case of application, revocation and expiration of licenses issued by Federal Agencies), and Section 10 (judicial review).

The decision of the Circuit Court of Appeals in this case will not have the dire consequences conjured by petitioners. On the contrary any other conclusion would result in numerous conflicts, between federal and state authority, confusion and embarrassment inherent in dual regulation, and thereby defeat the clearly expressed intention of Congress that only one authority should control and regulate federally licensed warehouses.†

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* See, Letter of Attorney General of the United States dated October 19, 1945, to Chairman of the Senate Judiciary Committee (Senate Document No. 248, 79th Cong., 2nd Sess. pp. 223, 229) stating that Sections 9 and 10 were generally declaratory of existing law.

† See, *First Iowa-Hydro Electric Coop.* v. *Federal Power Commission*, ... U. S. ....., 66 S. Ct. 906, 912, *supra*, where, in holding that an applicant need not first obtain a permit under state law as a condition precedent to the issuance of a federal license for the same project under the Federal Power Act, this

IV.

TO GRANT THE RELIEF SOUGHT BEFORE THE ILLINOIS COMMERCE COMMISSION WOULD PREVENT THE ATTAINMENT OF THE PURPOSES AND OBJECTIVES OF THE UNITED STATES WAREHOUSE ACT.

The function of this court in determining whether acts of Congress supersede state law is described as follows in *Hines* v. *Davidowitz*, 312 U. S. 52, which held that the Federal Alien Registration Act of 1940 precluded the enforcement of the Pennsylvania Alien Registration Act of 1939 (p. 67):

> "There is not—and from the very nature of the problem there cannot be—any rigid formula or rule which can be used as a universal pattern to determine the meaning and purpose of every act of Congress. This Court, in considering the validity of state laws in the light of treaties or federal laws touching the same subject, has made use of the following expressions: conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability; inconsistency; violation; curtailment; and interference. But none of these expressions provides an infallible constitutional test or an exclusive constitutional yardstick. In the final analysis, there can be no one crystal clear distinctly marked formula. Our primary function is to determine whether, under the circumstances of this particular case, Pennsylvania's law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

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court stated that to impose such requirement would vest in state authorities "a veto power over the federal project", and that:

> "Such a veto power easily could destroy the effectiveness of the federal act. It would subordinate to the control of the State the comprehensive' planning which the Act provides shall depend upon the judgment of the Federal Power Commission or other representatives of the Federal Government."

In the light of this statement, the first inquiry is: What were the purposes and objectives of Congress in the enactment of the United States Warehouse Act? It is obvious as heretofore shown from an examination of the Act and amendments thereto, the reports in the House and Senate and the congressional debates (pp. 15, 16, 25, *supra*), that Congress intended to establish a nationwide uniform system of warehousing in order to foster trade and commerce in agricultural products, and to facilitate the marketing and financing thereof through the use of warehouse receipts. The laws of the several states on the subject of warehousing thereof, are not uniform. Many of such state laws, as will be shown particularly in considering the laws of Illinois, are in conflict with the United States Warehouse Act and accordingly are "an obstacle to the accomplishment of the full purposes and objectives of Congress".

Federal supremacy over state regulation does not always depend on the express language of the applicable act. A recent application of the rule that state regulation may be precluded by clear implication or inconsistency appears in *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, where a state law was held to be superseded although not expressly in conflict with the federal act. In that case, the Court stated the question to be (pp. 165-6):

> "The controversy comes to this. The federal law requires, § 2325, note 10, *supra*, 'a rigid sanitary inspection • • • of all factories and storehouses where process or renovated butter is manufactured, packed, or prepared for market, and of the products thereof and materials going into the manufacture of the same,' *i. e.*, packing stock butter.
>
> "But as we have seen, the Secretary of Agriculture of the United States cannot condemn the packing stock butter. The commissioner of agriculture and industries of Alabama claims authority under the state statute to condemn packing stock butter held for renovation. Does the state's claim interfere or conflict with the federal power?" • • •

Continuing, the Court concluded (pp. 167-9):

"Coming finally to the query whether the state's claim interferes or conflicts with the purpose or provisions of the federal legislation, we determine that it does. • • •

"Inspection of the factory and of the material was provided for explicitly. Confiscation of the finished product was authorized upon a finding of its unsuitability for food through the use of unhealthful or unwholesome materials, a finding that might be based upon visual or delicate laboratory tests, or upon observation of the use of such materials in the process of manufacture. I. R. C. § 2325; 9 C. F. R. §§ 301.41-43. By the statutes and regulations, the Department of Agriculture has authority to watch the consumer's interest throughout the process of manufacture and distribution. It sees to the sanitation of the factories in such *minutiae* as the clean hands of the employees and the elimination of objectionable odors, inspects the materials used, including air for aerating the oils and confiscates the finished product when materials which would be unwholesome if utilized are present after manufacture. Confiscation by the state of material in production nullifies federal discretion over ingredients. • • •

"• • • To uphold the power of the State of Alabama to condemn the material in the factory, while it was under federal observation and while federal enforcement deemed it wholesome, would not only hamper the administration of the Federal act but would be inconsistent with its requirements." • • • •

The *Cloverleaf* case was followed in *Hill* v. *Florida*, 325 U. S. 538. Section 4 of the Florida statute providing for licensing of "business agents" and Section 6 requiring the filing of annual reports by labor unions and the payment of an annual fee were held invalid in view of the collective bargaining provisions of the National Labor Relations Act.

Counsel (Rice brief, pp. 25-6) infer that the *Cloverleaf* case may have been overruled by the *Penn Dairies, Inc.* v. *Milk Control Commission*, 318 U. S. 261, since Mr. Chief Justice Stone wrote the majority opinion in the latter case and dissented in the former. The *Penn* case held that sales of milk made in Pennsylvania to the government for the army were subject to the minimum prices fixed by the state price control law. The court considered the applicable federal statutes and found no intention on the part of Congress to give government contractors any immunity. The *Cloverleaf* case was not mentioned in the majority and concurring opinions and was only cited on a collateral point in the dissenting opinion (p. 283).

Rice petitioner (Brief, pp. 38-39) admits that Congress in 1931 "amended Section 29 to establish the federal act as supreme, but only with respect to those specific phases of control delegated to the Secretary,"* and adds "The sole purpose of the amendment was to strengthen the value of warehouse receipts by eliminating conflicting state provisions." Notwithstanding this admission, counsel, relying on the numerous provisions of the state law sought to be invoked in regulating almost every phase of grain warehouse operations fails to recognize or concede any conflict in the many points of impact with the federal law. It would seem to follow under this view that the Act, as

* Counsel at the same time have no difficulty in citing (Rice Brief, p. 48) the 1937 Report of the Federal Trade Commission entitled "Agricultural Income Inquiry" as a considered opinion by that agency that there is no federal regulation of grain warehouses. We submit that this interpretation is unwarranted and that such report merely recommends that the federal government go further and adopt a mandatory system requiring all grain warehouses engaged in interstate commerce to comply with federal laws. It is elementary that the fact that Congress has not fully exercised all its power in a given field does not detract from or vitiate the paramount authority already exercised by the federal government. (See *Currin* v. *Wallace*, 306 U. S. 1, 14.)

amended, was an empty gesture and no control or authority was given the Secretary. We submit that such a construction defeats the clear intent of Congress, impedes the accomplishment of the purposes and objectives of the United States Warehouse Act and ignores the rule that state regulation may be precluded by clear implication or inconsistency.*

The comparison we shall now make of the charges in the Rice complaint with the provisions of United States Warehouse Act and the regulations thereunder clearly demonstrates that the purposes of the Act would be thwarted and that only confusion would result from the "dual system of futile duplication of two authorities over the same subject matter" urged by Petitioners (cf. *First Iowa-Hydro Electric Coop.* v. *Federal Power Commission*, ... U. S. ....., 66 S. Ct. 906, 915).

In addition to the many specific provisions of the Act, we shall also consider in detail the numerous regulations (7 C. F. R., § 102, *et seq.*) promulgated by the Secretary, in accordance with Section 28 (7 U. S. C. § 268) authorizing him to "make such rules and regulations as he may deem necessary for the efficient execution of the provisions of this Act." As noted by the Circuit Court of Appeals, (156 F. 2d, p. 40, R. 100) no point is made that the regulations are not within the scope of authority conferred upon the Secretary.

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* Mr. Chief Justice Stone, in his dissent in *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, 170, recognized this rule when he stated that a state act may be superseded by federal law where "• • •, in terms or in its practical administration, [it] conflicts with the act of Congress or plainly and palpably infringes its policy • • •."

A.

The Rates and Charges of a Federally Licensed Warehouseman Are Subject to the Exclusive Jurisdiction of the Secretary of Agriculture.

Paragraph 7 of the Rice complaint (R. 16) alleges that the warehousemen maintain unreasonable and excessive rates and charges. Similar charges appear in paragraphs 13 (g) and 14 (R. 19-20). Paragraph 16 (R. 20-21), the prayer of that complaint, requests that the Commission, "after hearings, fix just, reasonable, non-discriminatory and non-preferential rates and charges for the public storage of grain."

Section 25 of the United States Warehouse Act provides that after a hearing, the Secretary of Agriculture may revoke a warehouseman's license "upon the ground that *unreasonable or exorbitant* charges have been made for services rendered." (Italics ours) (7 U. S. C. § 246) Section 18 of the Act provides: "That every receipt issued for agricultural products stored in a warehouse licensed under this Act shall embody within its written or printed terms * * * (e) the rate of storage charges." (7 U. S. C. § 260). Section 23 requires every warehouseman to make reports to the Secretary of Agriculture concerning the "condition, contents, operation, and business" of the warehouse in such form and at such times as the Secretary may require. (7 U. S. C., § 264)

The regulations state (Reg. 5, Sec. 3): "A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted under the act the warehouseman shall file with the department a copy of his rules and a schedule of charges to be made by him if licensed." Before making a change in rules or charges, a warehouseman must file a

statement with the Department of Agriculture showing the proposed change and reasons therefor. It is also provided that current rules and charges must be conspicuously posted in the principal office where receipts issued by the warehouseman are delivered to depositors (Reg. 2 Sec. 6). Reg. 2, Sec. 7 provides that before revoking a warehouseman's license "upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with regulation 10, section 4."

It matters not that the Secretary of Agriculture may not have been granted all the usual powers given public utility regulatory bodies with respect to rate making. The true issue before the court is: whether the power and control given the Secretary under the United States Warehouse Act indicate an intention on the part of Congress to make the Secretary's powers over a federal licensee's rates and charges exclusive and thereby preclude the Commission from fixing, establishing and determining the rates and charges of such warehousemen?

Respondents filed a schedule of rates and charges with the Secretary in order to secure their federal licenses. These rates are posted in each of Respondents' offices and are observed by them. Let us suppose that the Commission, pursuant to the complaint, conducted a rate hearing and ordered certain rates raised and others lowered, and ordered respondents to cease and desist from charging those rates filed with the Secretary. If the warehousemen continued to charge such rates they would face the penalties of the state law. If they charged rates different from those

on file with the Secretary they would risk revocation of their federal licenses.

Which rates govern in this head-on clash between the state and federal rates?

Petitioners assume (Rice brief, p. 59) that Respondents would simply file the rates approved by the state agency with the Secretary, and there would be no conflict between the Illinois statutes and the United States Warehouse Act. But this assumption is incorrect. Under Sections 25 and 29 of the Act, the Secretary has the exclusive power after a hearing to determine whether a federal licensee's rates are unreasonable or exorbitant (7 U. S. C. §§ 246, 269). A warehouseman must not make any unreasonable or exorbitant charge for services. Before making any change in charges he must file a statement with the Department of Agriculture showing the proposed change and reasons therefor (Reg. 5, Sec. 3).

How, then, can the Commission fix, establish and determine a federal licensee's rates when such rates may be found by the Secretary to be unreasonable and exorbitant? Is the Commission to review and pass judgment upon the rates filed with the Secretary by a federally licensed warehouseman? How can a federal warehouseman avoid the dilemma of being required to charge a rate specified by state law and losing his federal license if he charges that rate? The inescapable answer is that the rates of federally licensed warehousemen are subject to one authority—the Secretary of Agriculture—and not to the vagaries of the utility commissions of the various states.

The Rice complaint before the Commission clearly demonstrates one aspect of the conflict on this issue. Respondents have filed schedules of rates with the Secre-

tary clearly disclosing preferential rates to government agencies (R. 49-62). The Secretary has interposed no objection to these rates. The Rice complaint charges this to be discriminatory and requests the Commission to take action. We submit that the Secretary is the proper forum to determine any such question.

The Secretary's power to revoke a federal warehouseman's license for unreasonable or exorbitant rates provides an adequate authority to protect the public interest. This sanction, in effect confers upon him the power to control rates in the public interest. If the licensee fails to conform to the rate determined by the Secretary to be reasonable, his valuable federal license is revoked and he will immediately be subjected to state regulation. Thus the Circuit Court of Appeals stated (156 F. 2d, p. 41, R. 101): "We suppose that the essential function of a rate-making body is to determine rates which will be fair both to the utility and to the public, and it appears plain that the Secretary is vested with the authority to accomplish such purpose."

The conflict between the federal and state regulation of rates necessarily involved in the present case is comparable to a similar problem which arose when the Interstate Commerce Act was first adopted. That Act prohibited unjust and unreasonable charges, and required the carrier to establish and file with the Interstate Commerce Commission, and to publish, all schedules of rates. When a carrier filed its rates, fares and charges with the Interstate Commerce Commission and published them it was unlawful to collect a greater or lesser sum for transportation of passengers or property.

Interstate Commerce Commission v. *Cincinnati, etc. Railway Co.*, 167 U. S. 479, held that the Commission under this statute did not have power to fix, establish and deter-

mine rates and charges. The Court, however, held that the rates and charges filed with the Interstate Commerce Commission and published, took precedence over any rate provided by state statute, private contract or common law.

In *Gulf, Colorado and Santa Fe Railway Company* v. *Hefley*, 158 U. S. 98, a Texas law enacted in 1882 provided that charges stated in a bill of lading were binding on the carrier and also adopted penalties for its violation. The Interstate Commerce Act of 1887 gave precedence to the rate filed with the Interstate Commerce Commission and publicly posted, and made that rate controlling. The carrier issued a bill of lading at the new rate of 69¢ per 100 lbs. This rate was filed with the Commission by the carrier, but notice thereof had not been given to the local agent who refused to deliver the goods except at the old rate of 84¢ per 100 lbs. Suit was started and recovery was had against the carrier for all the freight charges by virtue of the state statute. In reversing, it was held that the state statute fixing the penalty in question was not applicable and that the rate filed with the Commission superseded any state statute fixing a different rate. The Court stated (pp. 102-3):

> *"Clearly the state and the national acts relate to the same subject matter and prescribe different rules. By the state act the bill of lading is made controlling as to the rate collectible, and a failure to comply with that requirement exposes the delinquent carrier to its penalties, while the national statute ignores the bill of lading and makes the published tariff rate binding, and subjects the offender, both carrier and agent, to severe penalties. The carrier cannot obey one statute without sometimes exposing itself to the penalties prescribed by the other.* Take the case before us: If, in disregard of the joint tariff established by the defendant and the St. Louis and San Francisco

Railway Company and filed with the Interstate Commerce Commission, the latter company, as a matter of favoritism, had issued this bill of lading at a rate less than the tariff rate, both the defendant company and its agent would, by delivering the goods upon the receipt of only such reduced rate, subject themselves to the penalties of the national law, while, on the other hand, if the tariff rate was insisted upon, then the corporation would become liable for the damages named in the state act * * * *The question is not whether, in any particular case, operation may be given to both statutes, but whether their enforcement may expose a party to a conflict of duties. It is enough that the two statutes operating upon the same subject matter prescribed different rules. In such case one must yield, and that one is the state law.''* (Italics ours.)

The logic of this case, as applied to the case at bar, is inescapable. To the same effect see *Texas and Pacific Railway Company* v. *Mugg*, 202 U. S. 242, holding invalid a contract between carrier and shipper for less than the rates listed in schedules filed with the Interstate Commerce Commission and posted in the stations of the railroad company; and also *Texas and Pacific Railway Company* v. *Abilene Cotton Oil Company*, 204 U. S. 426, holding that a common law action by a shipper to recover excessive charges would not lie where the carrier charged rates filed and published as required by the Interstate Commerce Act.

The provisions of the United States Warehouse Act and regulations thereunder, dealing with rates and charges, in substance, require: (1) the filing of a schedule of charges with the Secretary prior to securing a license, (2) the filing with the Secretary of any change in charges, (3) revocation of a federal license, for unreasonable or exorbitant charges, after a hearing by the Secretary, and (4) the posting of a schedule of charges in a conspicuous place where receipts are issued to depositors. In addition the Secretary is given

comprehensive power to compel warehousemen to make reports and comprehensive power over books and records to aid him in his control of rates and charges.

It is, therefore, submitted that just as was held under the original Interstate Commerce Act (before the Commission was specifically granted rate making powers by the Hepburn Act), the power given the Secretary of Agriculture under the United States Warehouse Act and regulations to pass upon what constitutes "unreasonable or exorbitant" charges precludes a state from establishing and determining the rates and charges of federally licensed warehousemen.

Recognition of any authority in a state agency to fix, establish and determine rates is inconsistent with the broad administrative powers conferred on the Secretary. If such a power were conceded, a rate filed and found reasonable and just by the Secretary could be held unreasonable and unjust and changed by the state despite the fact that the power, jurisdiction and authority conferred on the Secretary, under the United States Warehouse Act, as amended, is "exclusive".

It is therefore submitted that Congress did not intend that the states shall have any power to regulate the rates and charges of warehousemen licensed under the United States Warehouse Act.

B.

The Secretary Has Exclusive Jurisdiction Over Storage Rates on Grain Stored for the Federal Government.

Paragraph 8 (R. 17) of the Rice complaint alleges that the warehousemen discriminate because the federal government and agencies receive preferential rates.

Section 13 of the United States Warehouse Act provides that a federally licensed warehouseman is required to re-

ceive grain for storage in the usual course of business *"without making any discrimination between persons desiring to avail themselves of warehouse facilities"*. (7 U. S. C. § 254) (Italics ours)

Reference is also made to the statutory provisions and regulations set forth in the discussion of the paragraphs of the Rice complaint dealing with rates at pp. 36, 37, *supra*.

As noted from the affidavits filed in support of Respondents' motion for a preliminary injunction (R. 49-62) the warehousemen have stored considerable quantities of grain for the United States Government. The preferential rates for the government and its agencies have been disclosed to the Secretary of Agriculture and have thus been recognized and approved.

If this practice should be considered to constitute discrimination by the state, the federal and state acts undoubtedly conflict, and the state law must yield. This Court has indicated that it is not an improper discrimination to give the United States Government preferential rates. Thus, in *Emergency Fleet Corporation* v. *Western Union*, 275 U. S. 415, 425, this Court stated: "It may be doubted whether the prescribed rule requiring equality of treatment would ever be violated by giving to the government preferential rates." In an opinion* to the Secretary of War the Attorney General has stated that statutes preventing discrimination, such as the Robinson-Patman Act did not apply to the government (38 Opinions Attorney General 539). This, of course, is in accordance with the general rule of statutory construction that the government and its agencies are not to be considered within the purview of a statute unless the intention to include them is clearly manifest (59 C. J. 1103-4).

* Cited with approval in *General Shale Products Corp.* v. *Struck Construction Company*, 37 F. Supp. 598, (D. C. W. D. Ky.).

Regardless of the merits of this controversy, it presents a source of conflict which must be determined by federal authority.

C.

The Secretary Has Exclusive Jurisdiction Over the Discriminatory Charges and Practices Set Forth in the Rice Complaint.

Paragraph 9 of the Rice complaint (R. 17-18) alleges that warehousemen storing and dealing in grain receive undue preference and discriminate by (a) mixing high quality grain with their own inferior grain to reduce delivered grain to minimum quality; (b) sacrificing part of storage charges to effect purchases and sales of grain and rebating storage charges; (c) retaining desirable transit tonnage for their own use; (d) storing their own grain in warehouses with more reasonable insurance rates; and (e) unduly delaying loading of grain.

Mixing and delay in loading grain complained of in paragraphs 9(a) and 9(e) of the Rice complaint are covered by various sections of the United States Warehouse Act. Section 13 provides that the warehouseman shall receive grain for storage without making any discrimination (7 U. S. C. § 254). Section 15 states that fungible agricultural products in a federally licensed warehouse shall be inspected and graded by an inspector licensed to grade under the Federal Act (7 U. S. C. § 256). Section 16 states that warehouseman may mingle fungible agricultural products with other products of the same kind and grade but warehouseman shall not mix fungible agricultural products of different grades (7 U. S. C. § 258). Section 30 provides for fine and imprisonment for any person who fraudulently grades any agricultural products stored under the provisions of the Act (7 U. S. C. § 270). Section 21 provides

that the warehouseman shall "without unnecessary delay" deliver stored products upon proper demand (7 U. S. C. § 262).

The regulations further provide that (Reg. 5, Sec. 18) the warehouseman may not mix lots of different grades of grain except when identity of grain stored is to be preserved and that (Reg. 5, Sec. 12) the warehouseman shall accept grain for storage and deliver grain out of storage in accordance with the grades of such grain determined by a duly licensed inspector. It is also provided that (Reg. 5, Sec. 16) the warehouseman shall deliver fungible grain to the lawful holder of the warehouse receipt of the grade and quantity named in such receipt.

Sacrificing or rebating storage charges complained of in paragraph 9 (b) of the Rice complaint violates Regulation 5, Sec. 3, providing that no change in charges on file with the Secretary may be made without filing the change in charges with the Secretary together with the reasons therefor.

Sacrificing or rebating storage charges, retaining desirable transit tonnage, and utilizing preferred storage space from an insurance point of view (Rice complaint, paragraphs 9 (b), (c) and (d)) are discriminations covered by the broad language of Section 13 of the United States Warehouse Act (7 U. S. C. § 254) which provides: "That every warehouseman conducting a warehouse licensed under this Act shall receive for storage therein" agricultural products. The phrase, "receive for storage" needs no interpretation. It refers to storage of grain during the whole storage process, not merely receiving the grain into store, as is contended (Rice Brief, p. 64). This meaning is further supported by the definition in Section 2 of the Act of a "warehouse licensed under this Act" as a "* * * building in which any agricultural product *is or may be*

stored for interstate or foreign commerce". (7 U. S. C. § 242) (Italics supplied)

Section 13 further provides that agricultural products must be received "without making any discrimination between persons desiring to avail themselves of warehouse facilities." Warehouse "facilities" cover everything used in the operation of the warehouse and in accommodation of its patrons at any time and include storage space, loading of grain, mixing of grain and transit tonnage. Any discrimination, be it self-preference, sacrificing or rebating charges or any other type of discrimination arising in connection with any warehouse facility when grain is stored or thereafter is clearly covered, and the Circuit Court of Appeals so held, stating (156 F. 2d, p. 41, R. 102): "It would appear that this provision gives the Secretary authority to prevent discriminations either in favor of or against any person employing warehouse facilities."

The argument is made (Rice Brief, p. 27) that the purpose of the United States Warehouse Act was to establish "a warehouse receipt that would be more readily accepted as collateral on loans," and to avoid "gross dishonesties" that had been practiced by warehousemen. Now it is argued (Rice Brief, p. 64) that "discrimination" as defined in that Act should be stripped of the broad meaning necessary to achieve this objective and confined merely to discrimination at the time the agricultural product is received for storage. To so limit "discrimination" defeats the very purpose for which Petitioner contends the Act was passed—the protection and validation of federal warehouse receipts.

Each warehouseman agrees as a condition to the granting of his license to abide by all the terms of the Act (Section 4, 7 U. S. C. § 244) and after a hearing the Secretary may under Section 25 revoke a warehouseman's license

"for any violation of this Act or of the rules and regulations made hereunder" (7 U. S. C. § 246).

The power given the Secretary to revoke a federal after a hearing, is as effective as any cease and desist order of the Commission would be, for if any affirmative relief is necessary a federal warehouseman must take the required action or lose his valuable license.

D.

Federally Licensed Warehousemen May Issue United States Warehouse Receipts Showing Themselves as Owners of Grain Stored in Their Own Warehouses.

Paragraph 10 of the Rice complaint (R. 18) alleges that the warehousemen by storing public grain and also dealing in grain violate Article XIII of the Illinois Constitution which, as interpreted by the Illinois Supreme Court in *Hannah* v. *People*, 198 Ill. 77, denies a warehouseman the right to store and deal in his own grain in the public warehouse operated by him.

The United States Warehouse Act in Section 18 (i) authorizes warehousemen to store their own grain by making the following provision with respect to federal warehouse receipts "* * * if the receipt be issued for agricultural products of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership" shall be shown. (7 U. S. C. § 260 (i))

The regulations under the act provide (Reg. 4, Sec. 1 (c)) that the contents of warehouse receipts shall indicate: "(c) in event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship."

Section 5(a) (7) of the Commodity Exchange Act, as amended, was specifically enacted to cover such a situation and provides that receipts issued under the United States Warehouse Act "shall be accepted in satisfaction of any futures contract * * * notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law." (7 U. S. C. § 7 (a) 7).

As noted from the affidavits filed by Respondents in support of their motion for preliminary injunction (R. 49-62) federal warehouse receipts are outstanding showing them to be the owners of millions of bushels of grain stored in their own warehouses. Their validity is recognized by the foregoing provisions of the United States Warehouse Act and regulations, and the Commodity Exchange Act.

Counsel state (Rice Brief, p. 27) that the purpose of the United States Warehouse Act was "establishing a warehouse receipt that would be more readily accepted as collateral on loans" and that the Act "is essentially a warehouse receipt act." In discussing the 1931 amendment it is stated (Rice Brief, p. 39): "The sole purpose of the amendment was to strengthen the value of warehouse receipts by eliminating conflicting state provisions." While asserting that this was the principal purpose of the Act, counsel now argue (Rice Brief, pp. 60-61) that Illinois law should regulate the terms and provisions of warehouse receipts even though issued by a federally licensed warehouseman and notwithstanding the clear provisions of federal law.

Are the local laws to govern the provisions of a federal warehouse receipt, or shall the United States Warehouse

Act and Commodity Exchange Act govern? If the admitted purpose of Congress is to be effectuated, the value of federal warehouse receipts as collateral must not be endangered or impaired by any conflicting laws of the various states. The Circuit Court of Appeals (156 F. 2d p. 41, R. 101) stated: "To sustain defendants contention on this point would immediately invalidate receipts of the value of millions of dollars. It would seriously impair one of the main purposes of the Act, that is, the integrity of warehouse receipts."

Cf. *Missouri Pacific Railroad Company* v. *Porter*, 273 U. S. 341, in which the Interstate Commerce Act requiring all carriers to establish and enforce just and reasonable regulations affecting the issuance, form and substance of bills of lading, and directing action by the Interstate Commerce Commission to keep informed and to enforce the provisions of the Act, was held to preclude state law concerning bills of lading even though the Commission had not specified the form of such documents.

In *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188 (Rice Brief, p. 61) a Missouri statute prohibiting bucket shops was sustained in a situation involving transactions wholly within Missouri. The statute was held not to be superseded by the Federal Grain Futures Act because there was (p. 200) "nothing in the state law which is inconsistent with or could conceivably interfere with the operation or enforcement of the federal law." Cf. *Albers* v. *Bamson*, 380 Ill. 35, holding that grain futures contracts on the Chicago Board of Trade were not invalid as gambling transactions under Illinois law in view of the paramount authority of Congress exercised in the Commodity Exchange Act legalizing such contracts.

In *Minnesota ex rel. Whipple* v. *Martinson*, 256 U. S. 41 (Rice Brief, p. 61) a Minnesota statute prohibiting phy-

sicians from furnishing drugs to certain persons was held not to be in conflict with the Harrison Anti-Narcotic Drug Act, which required a dispenser of drugs to register with the Collector of Internal Revenue and pay a special tax per annum. The Supreme Court stated (at p. 46) that there was nothing in the Minnesota statute "which interferes with the enforcement of the federal revenue law."

It is suggested (Rice Brief, p. 62) that the application of Illinois law to outstanding federal warehouse receipts would have no effect on "innocent" receipt holders. This, of course, overlooks the fact that under the Federal Act as well as Sec. 2 of the Uniform Warehouse Receipt Act in force in Illinois (Ill. Rev. Stat. 1945, Ch. 114, § 234) if the warehouseman is the owner of grain stored in his own warehouse it must appear on the face of the receipt. This would bring direct notice to all holders of this infirmity, immediately impair negotiability, and thereby defeat the purpose of both the Warehouse and the Commodity Exchange Acts to preserve and protect the validity and negotiability of federal warehouse receipts.

An analogous situation was presented in *Farmers Grain Co.* v. *Langer*, 273 F. 635 (C. C. A. 8th,) aff'd *sub. nom. Lemke* v. *Farmers Grain Co.*, 258 U. S. 50 which held the North Dakota Grain Inspection law invalid as a burden on interstate commerce and because of conflicts with the United States Grain Standards Act. Under the North Dakota law, a purchaser of wheat was required to obtain a state license and to comply with all provisions of the state law, and regulations thereunder, including a requirement that inspection be made at point of origin in North Dakota. Under the federal law, such inspection could be made at point of destination or at some convenient intermediate point. The Court said in this connection (p. 651):

> "Both Acts ought not to be and cannot be enforced without confusion and embarrassment * * *".

It further appeared that, under the Federal Act, an inspector could not be interested financially or otherwise in any grain elevator or warehouse, or in the merchandising of grain, and could not be in the employ of any person owning or operating any grain elevator or warehouse. Under state law, a deputy inspector under the Act was defined as including any firm, person or corporation engaged in buying, weighing and grading grain. In holding that the two laws conflicted, the Court stated (p. 652):

> "Thus one law requires that the inspector shall have no interest in the business and the other law requires that he shall. Which law is to prevail? Certainly the federal law, if the business is interstate commerce. It is useless to discuss further the matter of conflict, for the reason that, if both laws relate to the same subject, the state law attempts to regulate something that the state has no power to regulate, and, Congress having acted, the state law is in direct conflict with the federal law."

E.

Regulation of the Safety of Respondents' Elevators, and Storage of Grain Therein Is Subject to the Exclusive Jurisdiction of the Secretary.

Paragraph 11 of the complaint (R. 18) alleges that certain elevators are unsafe and inadequate requiring exorbitant insurance rates. Paragraph 12 (R. 18) alleges inefficient storage and handling leading to deterioration of grain.

Section 3 of the United States Warehouse Act authorizes the Secretary of Agriculture: "* * * to determine whether warehouses for which licenses are applied for or have been issued under this Act are suitable for the proper storage of any agricultural product or products," and "* * * to prescribe * * * the duties of the warehousemen conducting warehouses licensed under this Act

with respect to their care of and responsibility for agricultural products stored therein." (7 U. S. C. § 243) Section 23 provides that the warehouseman shall make reports to the Secretary of Agriculture concerning the condition, contents, operation and business of his warehouse in such form and at such times as the Secretary may require (7 U. S. C. § 264), and Section 24 provides that the Secretary is authorized to examine agricultural products stored in licensed warehouses and to publish his findings. (7 U. S. C. § 265)

The regulations provide (Reg. 5, Sec. 15) that the warehouseman shall keep the warehouse clean and free from accumulation of materials that will increase fire hazard; (Reg. 2, Sec. 5) that a license will not be granted if the warehouse is not suitable for proper storage of grain; (Reg. 5, Sec. 1, par. 3) that the warehouseman shall post a notice stating briefly the conditions under which the grain will be insured against loss or damage by fire, lightning or tornado; (Reg. 5, Sec. 8) that the warehouseman shall at all times exercise such care in regard to grain in his custody as a reasonably careful owner would exercise under the same circumstances and conditions, and (Reg. 5, Secs. 21-23) contains extensive provisions with respect to condition of grain stored.

The above sections of the Act and regulations also set forth detailed provisions concerning unsafe and inadequate elevators and inefficient storage and handling of grain.

Federal inspectors and examiners, who periodically inspect and examine federally licensed warehouses, keep the Secretary continually advised as to the condition of the elevators and the efficiency of the storage and handling of grain. (See R. 49-62 for affidavits showing periodical inspections of respondents' grain elevators).

Counsel (Rice Brief, p. 65) ignore all the foregoing provisions except a portion of Section 3 of the Act which it is

argued limits the power of the Secretary of Agriculture merely to determining whether a warehouse is suitable for proper storage of agricultural products.

The affirmative power in section 3 authorizing the Secretary "* * * to prescribe * * * the duties of the warehousemen conducting warehouses licensed under this Act with respect to their care of, and responsibility for, agricultural products stored therein" gives him exclusive jurisdiction over those charges of the Rice complaint as to unsafe and inadequate elevators and inefficient storage and handling of grain. The warehouseman must conform to the duties prescribed by the Secretary in connection with the foregoing matters or lose his federal license. It is no answer to say that the duties prescribed are in furtherance of the integrity of warehouse receipts (Rice Brief, p. 67). As stated by the Circuit Court of Appeals (156 F. 2d, p. 40, R. 99): "The efficient handling and preservation of such grain in a warehouse suitable and properly adapted to its storage was highly essential if the Secretary was to discharge properly the responsibility placed upon him in connection with the receipts."

Atchison, T. & S. F. R. Co. v. *Railroad Commission*, 283 U. S. 380 (Rice Brief, p. 65), is not in point. In that case, although the Interstate Commerce Commission could not affirmatively order the act done, its approval was required before the state commission could compel construction of a railroad terminal. The Interstate Commerce Act contemplated state action subject to the requirement of a certificate of approval from the Interstate Commerce Commission. No such provision sanctioning state action is found in the United States Warehouse Act. How can a state agency compel additions, repairs and improvements of a federally licensed warehouse when the Secretary alone has the power to determine whether the federal warehouse is suitable and to prescribe the duties in respect

to care and responsibility for agricultural products stored in a federal warehouse? The views of federal and state authorities on such subjects may well differ and result in conflict.

F.

State Control Over Respondents' Contracts and Security Issues Would Hamper the Administration of the United States Warehouse Act.

Paragraph 13 of the Rice complaint (R. 19) alleges that the warehousemen have violated Illinois Statutes by (a) failing to secure Commission approval of contracts with affiliates; (b) failing to secure the Commission's approval of contracts with other public utilities; and (c) failing to secure authority from the Commission to issue securities.

The enforcement by state authorities of the Illinois law sought to be invoked in the above portions of paragraph 13 would hamper the administration of the Federal Act and defeat the intention of Congress. Thus, the Circuit Court of Appeals said (156 F. 2d, p. 40, R. 99):

> "The importance which Congress attached to warehouse receipts is illustrated by the numerous conditions required as a prerequisite to their issuance (See 7 U. S. C. A. § 260). From their very nature it is reasonable to conclude that Congress intended that the federal government take over all authority necessary to preserve their legality, negotiability, safety and value. This in itself required a broad field of control. * * * The efficient handling and preservation of such grain in a warehouse suitable and properly adapted to its storage was highly essential if the Secretary was to discharge properly the responsibility placed upon him in connection with the receipts."

The conflict that would arise if the provisions of Illinois law requiring the approval of the Commission with respect

to contracts, issue of securities, and financing of federal warehouses were applicable is demonstrated by the following example. Let us assume that a federally licensed warehouse is inspected by a federal inspector. As a result the Secretary pursuant to Section 3 of the United States Warehouse Act (7 U. S. C. § 243) requires the warehouseman to install new equipment so as to improve his care of grain, to fireproof his warehouse and remove fire hazards, and to immediately increase and improve numerous warehouse facilities at a cost of $150,000. The warehouseman's federal license would be revoked if he did not make the repairs as directed. To secure the $150,000 the warehouseman enters into contracts with an affiliate and another utility under which he borrows $100,000 payable out of current earnings. He issues $50,000 worth of debenture bonds for the balance.

Are these transactions subject to state approval when refusal would cause the revocation of his federal license? Is the Secretary's power limited by state approval? To require state regulation of such corporate transactions would clearly hamper the administration of the Federal Act. The Circuit Court of Appeals therefore properly concluded in connection with the foregoing charges in paragraph 13 of the Rice complaint that (156 F. 2d p. 43, R. 104) "'the Secretary has implied authority to deal there[illegible] with."

The silence of the United States Warehouse Act on the matters involved in this collateral portion of the Rice complaint indicates that Congress did not intend that such matters be supervised by state authorities, and its failure to expressly deal with these matters lends no support to Petitioners' position.

In *Oregon-Washington Railroad & Navigation Co.* v. *State of Washington*, 270 U. S. 87 the State of Washington

attempted to establish a quarantine against the importation of farm produce contrary to a federal law investing the Secretary of Agriculture with full authority over this subject. In precluding state action the Court said (p. 102):

> "* * * It is suggested that the States may act in the absence of any action by the Secretary of Agriculture; that it is left to him to allow the States to quarantine, and that if he does not act there is no invalidity in the state action. Such construction as that can not be given to the federal statute. The obligation to act without respect to the States is put directly upon the Secretary of Agriculture whenever quarantine, in his judgment, is necessary. When he does not act, it must be presumed that it is not necessary. With the federal law in force, state action is illegal and unwarranted."

See also Bikle, *The Silence of Congress*, 41 Harv. L. Rev. 200, 211 (1927), and the cases cited at pp. 23, 24, *supra*.

G.

Petitioners Concede the Secretary's Exclusive Jurisdiction Over Filing and Publishing of Charges.

Paragraph 13(d) (R. 19) of the complaint alleges that respondents failed to file, print and publish schedules of rates and charges and paragraph 13(e) charges that they have rendered services without filing and publishing rates, rules and regulations.

The regulations provide (Reg. 5, Sec. 3) that before a license is granted, the warehouseman must file with the Department of Agriculture a copy of his rules and a schedule of charges to be made by him if licensed. Any change in charges or rules must also be filed with the Department. A copy of the current rules and regulations must be posted in a conspicuous place in the principal office where receipts issued by the warehouseman are delivered to the depositors.

Respondents have each accordingly filed with the Secretary its schedules of rates and charges. Rice Petitioner in its brief makes no mention of the above portions of paragraph 13 of the complaint, and apparently it has abandoned this charge and conceded exclusive jurisdiction in the Secretary.

H.

A Federal Warehouseman Need Not Secure State Consent to Abandon His Warehouse.

Paragraph 13(f) (R. 19) of the complaint charges abandonment and discontinuance of service by the warehousemen without consent of the commission.

Section 5 of the United States Warehouse Act provides that a license shall terminate as therein provided or in accordance with the terms of the United States Warehouse Act and regulations thereunder. (7 U. S. C. § 245.) The regulations provide (Reg. 2, Sec. 7) that the Secretary may suspend the license where a warehouseman for any reason ceases to conduct a licensed warehouse and further that in such a case the warehouseman is under duty to notify the Department of the situation.

We submit that this provision is sufficient to protect the public interest. Congress did not deem it necessary to make any further provision, and require more. The fact that state laws may require the consent of a state agency before a warehouseman may discontinue his business, is merely indicative of another conflict between state and federal law.

Section 3 of the United States Warehouse Act also provides that the Secretary shall determine whether the warehouses of a federal licensee are suitable for storage of agricultural products (7 U. S. C. § 243). Assume that after an inspection of one of a federal licensee's warehouses it is

found unsuitable for storage of agricultural products, and that the warehouse cannot be repaired. Unless it is abandoned the warehouseman will lose his federal license. Is the state to have jurisdiction to permit or refuse this abandonment? Clearly, Congress never intended to allow a state agency to decide whether or not a federal licensee should lose his license. Once again the necessity for the "exclusive" power given the Secretary by Congress is evident. Furthermore, any voluntary abandonment of essential service by a federal warehouseman would be immediate grounds for a revocation of his federal license under Section 25 of the Act (7 U. S. C. § 246).

Thus the Circuit Court of Appeals properly sustained the Secretary's exclusive jurisdiction over abandonment of federally licensed warehouses when it stated (156 F. 2d, p. 40, R. 103):

"The mere issuance of a federal license carries with it the representation of a determination by the Secretary that the warehouse is suitable for the storage of grain. Suppose the Commission should find that the same warehouse should be abandoned. We think this would present a direct conflict between the Secretary and the Commission."

I.

A Federally Licensed Warehouseman May Operate Without a State License.

Paragraph 13(h) (R. 19) of the complaint alleges that the warehousemen are operating without a State license.

The United States Warehouse Act provides in Sections 3, 4 and 5 that the Secretary of Agriculture is authorized to issue a warehouseman a license provided the warehouse is suitable for proper storage and the warehouseman agrees to comply with the Act and regulations. (7 U. S.

C. §§ 243-245.) Section 29 of the Act provides that the power, jurisdiction and authority of the Secretary of Agriculture under the Act is exclusive with respect to all persons having a federal license (7 U. S. C. § 269).

In re Farmer's Cooperative Association, 8 N. W. 2d 557, p. 21, *supra*, squarely holds that a federal licensee under the United States Warehouse Act is neither subject to state statutes nor required to submit to state licensing provisions. It is submitted that this decision is sound and should be followed. Rice Petitioner makes no mention of the above charge in its brief here and apparently now concedes that a federally licensed warehouseman may operate without a state license.

Conclusion.

It thus appears as was stated by the Circuit Court of Appeals that (156 F. 2d, p. 43, R. 104), "all of the matters charged in the Rice complaint, on which the Commission has assumed jurisdiction and is about to act, concern directly or indirectly the operation of federally licensed warehouses and the storage of grain therein for which receipts are issued. The allowance of such relief by the Commission on the charges thus made would conflict with the Warehouse Act or 'plainly and palpably infringes its policy.' The exercise of such authority by the commission would thwart the primary purpose which Congress sought to accomplish."

In the instant case, we are dealing with a problem of vital national concern involving the vast interstate and international flow of millions of bushels of grain through Respondents' elevators and the Chicago market annually. Congress, having in mind the desirability of a uniform system of warehouses to facilitate the marketing and financing of agricultural products, and fully recognizing from

experience gained in the administration of this, and other comparable statutes, the confusion and inconsistencies that would be inevitable in overlapping state and federal regulation, clearly intended by the 1931 Amendments to foreclose state action in this field.

Respondents therefore submit that in determining the issue before this Court as to whether federally licensed warehouses are to be subject to the multiple rules and regulations of the various states, the conclusion is inescapable that Congress intended that only one authority—the Secretary of Agriculture—should regulate such warehouses as to the matters here in controversy, and that this Court should affirm the judgment of the Circuit Court of Appeals.

Respectfully submitted,

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Chicago, Illinois.
February 6, 1947.

APPENDIX.

Statements of Representative Lever, Sponsor of the Bill.

(Congressional Record, Vol. 53 Pt. 6, pp. 5924-5925, Apr. 11, 1916.)

"Mr. Lever: If Congress intends or desires to furnish to agriculture the same facility for credit which the reserve act now affords to commerce, ways and means must be devised which will give to agricultural security those same characteristics as have enabled the security of the merchant and other classes of people always to command credit. To meet this situation, to give negotiability to the paper of the farmer, we propose under the terms of the warehouse bill to set up a system of warehouses licensed and bonded under Federal authority for the storage of specified, nonperishable agricultural products. And upon such products, so stored, uniform receipts will issue, the grades and weights of the products specified therein having been determined previously by licensed weighers and graders in accordance with Government standards. The machinery is simple, and experience shows it to be effective.

"What is it? It contemplates a warehouse, bonded and under the control of a bonded and licensed warehouseman, to safeguard the product or security. It provides for the licensed weigher and grader which guarantees impartial and competent judgment as to the quantity and quality of the product. The quality of the product is measured by the Government standard of grade, which assures both correctness and uniformity of measurement.

"Each and all of these important and essential facts find expression in the face of the storage or warehouse

receipt. The workability of the entire plan depends ultimately and necessarily upon the absolute integrity of this receipt and especial care has been taken to see to it that the receipt in all cases speaks the facts with unquestioned verity. To be certain that such a receipt is provided and we have followed as closely as possible the form of receipt issued under the uniform warehouse receipts act, in force in 31 States of the Union, which has become more or less a standard form in the channels of commerce."

* * * * *

[Mr. Lever then quoted from a letter from Hon. W. P. G. Harding, from which the following excerpt is taken.]

"'The physical conditions attached to the warehouse must be considered. It must be so constructed as to afford adequate protection from the elements for cotton stored in it and it should be built in such a manner and of such materials as to provide for its contents a low insurance rate. The ownership and management of the warehouse must be responsible so that holders of receipts for goods stored in it may feel assured that the commodities represented by the receipts will, under all circumstances, be in the warehouse awaiting the return of the receipts. Furthermore, the banks and others making loans against warehouse receipts for cotton must be protected against adverse liens, and must be satisfied that the pledgor of the commodities covered by the receipt has a good and legal title to such commodities. The bill seems to recognize all of these points and it provides for proper inspection of warehouses, for the exercise of reasonable care on the part of the owners of warehouses receiving goods for storage, and further protects holders of receipts by requiring that the warehouses be bonded.'"

* * * * *

"A Federal warehouse law insures beyond doubt uniformity in character of warehouses, uniformity in methods

of inspection, uniformity in methods of weighing and grading, uniformity in the standard of measurement—grade—and above all, and more important than all, such a system provides for a uniform warehouse receipt, or credit instrument, for the same product in every State in the Union. Each receipt, whether issued from a warehouse in Texas or in South Carolina for a like product will carry on its face the same story and will be issued under the same rules and regulations and protected by the same law. Such a receipt must be of the highest collateral value and it is my belief that it would flow at once into the general system of securities and become realizable upon at any time in the general market of securities."

* * * * *

P. 7085. "Mr. Lever: Mr. Chairman, this bill undertakes to do three things: First, it seeks to standardize warehouses in this country with a view to reduce as much as possible the insurance rates upon such warehouses and upon the products stored therein. There is a great divergence of insurance rates on warehouses in this country, due largely to the fact that there is no proper standardization.

"It undertakes, in the second place, to standardize the methods of grading farm products with a view to give most impartial and accurate grade to all agricultural products. The system of grading in this country is likewise absolutely understandardized, with the result that agricultural products are suffering greatly because of it. We are undertaking here to have a system of grading for the same kind of product in every community in which the product is raised.

"In the third place, it undertakes to standardize warehouse receipts on agricultural products so as to give them collateral value for borrowing money, for taking advantage of the Federal reserve act which they do not now possess.

"There is no reason in the world why there should not grow up in this country a system of warehouses uniform in their character, uniform in their methods, with receipts uniform in all sections of the country for the same class of agricultural products. When that warehouse receipt issues on 10 bales of cotton in Lexington, S. C., it will be just as negotiable in Texas or New York as it would be if it was issued from a warehouse on 10 bales of cotton in Texas. Under the present hodgepodge system, which is no system at all, the farmer has no method of knowing the means by which he can take these products, store them, and in the end have some voice as to the price at which he is willing to part with them. That is the great fundamental purpose of this warehouse bill. It is an effort upon the part of Congress, upon the part of the Agricultural Committee, to give as far as we can greater strength, more uniformity, and greater negotiability to farm collateral paper, so men may borrow money upon easier terms, so the receipts may be standardized and interest may be cheaper and credit easier. So much for that."

SENATE COMMITTEE REPORT (1931) (S. REPT., 1775, 71ST CONG. 3RD SESS.)

The Committee on Agriculture and Forestry, to whom was referred the bill (H. R. 7) to amend Sections 4, 6, 8, 9, 10, 11, 12, 25, 29, and 30 of the United States warehouse act, approved August 11, 1916, as amended, having considered same, report thereon with the recommendation that the bill do pass.

The United States warehouse act was passed in August 1916. For the first five years little progress was made. During the past ten years substantial progress has been made. Two commodities illustrate these facts. By April 1, 1920, but 23 cotton warehouses, with 43,250 bales combined

storage capacity, were licensed. On February 24, 1931 there were 362 cotton warehouses with 4,881,459 bales capacity. On April 1, 1920, five grain warehouses with a total of 146,000 bushels storage capacity were licensed, while on February 24, 1931, 335 grain warehouses were licensed with an aggregate storage capacity of 76,519,792 bushels.

Since the passage of the act it has been used by all kinds of growers, organizations and hundreds of thousands of farmers. Their warehouse receipts have found acceptable outlets among the intermediate credit banks, with the federal farm board and with leading bankers of the country. Billions of dollars have been loaned on these receipts.

The act has demonstrated beyond question its usefulness in the marketing of our agricultural products. But experience has demonstrated that it can and should be strengthened. With that in mind, the amendments embodied in H. R. 7 are offered. These amendments may be treated in four groups.

The first group includes the amendments to Sections 4, 6, 8, 9, 11, 12, and 25. The substance of these amendments is merely to authorize the Secretary of Agriculture to designate an official of the Department to act for the Secretary in performing certain ministerial duties, such as the accepting or denying of applications, approving of bonds filed by warehousemen, issuing, suspending, reinstating, and cancelling of licenses, and charging and assessing fees.

The next amendment eliminates from Section 6 of the present act the clause which provides that the bond shall secure the faithful performance of the warehouseman's obligations as defined by State laws. Since the act does not give the department jurisdiction to enforce State laws, it is obviously unfair that a bond should be exacted of a warehouseman to satisfy State laws. Such a requirement subjects the bond to greater exposure of liability and naturally such increased exposure is reflected in the rates

charged for bond premiums. Moreover, if the bond is available under State acts this may result in taking away from Federal receipts some of the very best security that the Federal act contemplates shall be available for their protection. Again this amendment to Section 6 naturally follows the amendment suggested to Section 29.

Section 10 of the present act permits the charging of a warehouse inspection and license fee, but does not authorize charging a fee for license to sample, inspect, classify, grade, or weigh agricultural products stored in licensed warehouses. The amendment would authorize the charging of fees for such licenses.

Section 29 of the act now provides "That nothing in this act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen," etc. The effect of this wording is to make the Federal act subservient to State acts wherever there is a conflict. As might be expected there are conflicts between State laws and the Federal act. Since the law specifically makes the Federal act subservient to State laws in case of conflict, this feature militates against the full value of Federal warehouse receipts for collateral purposes. The amendment proposed to this section would make the Federal act independent of State laws. In other words, it would place the Federal act on its own bottom. It does not change the permissive feature of the Federal act. No warehouseman is obliged to operate under the Federal Act. The amendment merely leaves the choice to warehousemen and their patrons as to whether or not a warehouse shall be operated under the Federal act, and if it is decided to secure a license under the Federal act then the warehouseman would be authorized to operate without regard to State acts and be solely responsible to the Federal act. Bankers have repeatedly pointed out that this section of the warehouse

act is its weakest feature. This amendment will clarify and remove many uncertainties from the credit man's viewpoint. As the law now reads, for fear the Federal act may be negatived by State legislation or regulation, a banker is obliged to follow closely the laws of the 48 different States, the regulations thereunder, and the administrative rulings thereunder. This is an impossible task. The suggested amendment will place the Federal act independent of State acts and should enhance the value of receipts for collateral purposes. Again, this amendment is in harmony with the policy laid down in the national banking act. In other words, it leaves it with the warehousemen to decide whether they wish to operate under the State or Federal law and having made their choice they shall then be permitted to operate without interference on the part of any agency.

The amendment to Section 30 provides for punishing anyone who may after a warehouse receipt or certificate with intent to negotiate the same, but who may be defeated in its negotiation. It also increases the severity of the penalty section by leaving it discretionary with the court to impose a jail sentence not in excess of ten years, as compared to the maximum now of one year. In the light of some frauds which might be perpetuated a one-year jail sentence does not appear proportionate to the offense. Bankers have repeatedly expressed the view that the penalties which might be imposed for wrongdoing should be more severe.

This legislation is approved by both the Department of Agriculture and the Federal Farm Board, as evidenced by the following letters:

February 13, 1931.

Hon. Charles L. McNary
Chairman, Committee on Agriculture and Forestry
United States Senate

DEAR SENATOR:

I have your request for report on the bill H. R. 7, which relates to amendments to the United States warehouse act. This bill was passed by the House on May 7, 1930, and is identical with H. R. 16720, which passed the House during the 70th Congress. H. R. 7 also is identical with S. 1202, now pending. Except for a few changes, these bills are the same as the bills you introduced in the 70th congress, which was intended to amend the United States warehouse act in line with suggestions offered by this department.

In letters from this department dated December 28, 1928, and February 2, 1929, the department expressed itself as being in favor of this legislation, and urged its passage. The changes referred to above were indicated in the said letter of February 2, 1929. The department, therefore, is in accord with the principles underlying the amendments suggested in H. R. 7 and believes their adoption will enhance the value of the United States warehouse act and facilitate its administration.

Sincerely yours,

ARTHUR M. HYDE,
Secretary.

May 28, 1930.

Hon. Charles L. McNary
United States Senate

DEAR SENATOR:

The Farm Board is very deeply interested in the proposed amendment to the warehouse act, known as H. R. 7, for the reason that at the present time there is certain conflict in the warehouse measures as between the State and the Federal Governments, which is sought to be cleared up by this amendment.

May we ask your best efforts to secure the passage of this measure.

Very truly yours,

Chairman, Federal Farm Board.

HOUSE COMMITTEE REPORT (1930) (H. REPT. 4, 71ST CONG., 1ST SESS.)

The Committee on Agriculture, to whom was referred the bill (H. R. 7) to amend sections 4, 6, 8, 9, 10, 11, 12, 25, 26, 29, and 30 of the United States Warehouse Act, approved August 11, 1916, having considered the same, report thereon with a recommendation that it do pass. The bill reported herewith reads as follows:

* * * * *

This bill amends sections 4, 8, 9, 11, 12, and 25 of the present act by merely inserting after the words "the Secretary of Agriculture" the words "or his designated representative". In the law as at present the Secretary is charged with accepting and approving bonds, signing licenses, and suspending, cancelling, or revoking licenses. As the determinations of the facts upon which the Secretary must act involve a great many details and must be made by subordinates and as the Secretary is charged with the

administration of quite a number of regulatory statutes, it becomes impossible for him to personally perform many of these duties which are more or less administrative detail. Therefore, the committee recommends that authority be given the Secretary to designate a representative to perform such acts as accepting and approving bonds furnished by warehousemen and the issuance, suspension, cancellation, and revocation of licenses.

One of the amendments proposed to Section 6 of the present act is to insert the words "or his designated representative" following the words "the Secretary of Agriculture". The same reason applies in this case as mentioned in the preceding paragraph. Under the present law, Section 6 requires that a warehouseman desiring a license under the law shall file a bond with the Secretary of Agriculture to secure the faithful performance of his obligations as a warehouseman "under the laws of the State, District, or Territory, in which he is conducting such warehouse", as well as under the Federal warehouse act. It is proposed to eliminate that part of Section 6 of the act which requires that the bond cover obligations of the warehouseman under State laws. Frequently a warehouseman may be operating more than one warehouse. To meet the demands of certain depositors, he may want to license one of the warehouses under the Federal law. As the law now stands, he must file a bond with the Secretary of Agriculture before a license could be granted him, and this bond would not only cover his obligations under the Federal law but would apply equally to obligations under State laws, though the particular obligations in question may have been undertaken in a house which is not licensed under the Federal law. Of course the Federal Government has no jurisdiction over the non-licensed house; neither has it authority to enforce the State laws. The result might, therefore, very easily develop that a warehouseman commits some illegal act in the ware-

house which is not under the Federal act, but the bond which was furnished for the protection of depositors storing their products in the federally licensed warehouse might be exhausted under the State law. In fact, a recent decision in one of the State courts held that the bond furnished under the Federal act was liable for receipts not issued by the warehouseman under the Federal act.

Under Section 10 of the present law, the amount to be charged for a warehouseman's license is fixed at $2.00. No charge is authorized for issuing licenses to inspectors, weighers, graders, or samplers. Under the proposed amendment to this Section, the Secretary would be authorized to charge such a license fee as he deems reasonable whenever a license is issued to either a warehouseman, a sampler, inspector, weigher, or grader.

Under Section 29 of the law as at present, if the Federal Act in any way conflicts with the State law, the Federal law becomes subservient to the State law in so far as there is a conflict. The result is that the Federal law can be negatived by State legislation. This condition has worked against Federal warehouse receipts attaining that degree of usefulness for collateral purposes in the financing of agricultural products which Congress had intended they should attain. Bankers generally have recognized the worthy purposes of the warehouse act, but when they are approached to loan large amounts they view section 29 of the present law with considerable misgiving. To make the law accomplish the real purpose of Congress, it should be independent of any State legislation on the subject. The amendments proposed to section 29 of this bill aim to make the Federal warehouse act stand on its own bottom.

It is believed that the amendments embodied in this bill will give the warehouse receipts issued under the Federal warehouse act such collateral value as to command the confidence of all bankers and will place this law on a firm

foundation. In view of the fact that most of the big cooperative organizations of growers that are obliged to store their products are using warehouse receipts issued under the Federal warehouse act as collateral to loans, the amendments proposed are in the interests of orderly marketing of agricultural products both by the individual farmer and cooperative organizations. Inasmuch as these large cooperative growers' organizations require millions of dollars to adequately finance them during the marketing period, the committee feels that nothing should be left undone in perfecting the Federal warehouse act so that it will accomplish to the maximum the intent of Congress.

The Federal warehouse act has been in operation since 1916, and has exerted a helpful influence in the marketing of farm products. Warehouse receipts issued under the act have been favorably recognized and accepted by bankers in all parts of the country, as well as by the Federal reserve banks and intermediate credit banks. The need for storing farm products under the most favorable conditions will be naturally increased as a result of the farm relief legislation now receiving the attention of Congress. Although the act was amended in 1919 and again in 1923, experiences of the past five years have demonstrated the desirability of further amending the act. The present legislation therefore was introduced in the Seventieth Session of Congress at the request of the Department of Agriculture, favorably reported by the committee, and passed by the House on February 25, 1929. The committee believes that the further amendment of the act, as herein indicated, will facilitate its administration and further extend its usefulness in the marketing of farm products.

S. R. A.—B. A. E. 127, revised. Issued June 1931; Reissued June 1938 as amended

United States Department of Agriculture

BUREAU OF AGRICULTURAL ECONOMICS

SERVICE AND REGULATORY ANNOUNCEMENTS NO. 127, REVISED

REGULATIONS FOR WAREHOUSEMEN STORING GRAIN, AS AMENDED

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY.

By virtue of the authority vested in the Secretary of Agriculture by the United States warehouse act, approved August 11, 1916 (39 U. S. Stat. L., pp. 446, 486), as amended, I, Arthur M. Hyde, Secretary of Agriculture, do make, prescribe, publish, and give public notice of the following rules and regulations, to be known as the regulations for grain warehousemen, and to be in force and effect until amended or superseded by rules and regulations hereafter made by the Secretary of Agriculture. These rules and regulations shall supersede all rules and regulations issued under said act heretofore for grain warehousemen.

In testimony whereof I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington this 9th day of May, 1931.

Arthur M. Hyde

Secretary of Agriculture.

REGULATIONS FOR GRAIN WAREHOUSEMEN UNDER THE UNITED STATES WAREHOUSE ACT

Regulation 1. Definitions

SECTION 1. Words used in these regulations in the singular form shall be deemed to import the plural, and vice versa, as the case may demand. Words import singular or plural.

SEC. 2. For the purpose of these regulations, unless the context otherwise require, the following terms shall be construed, respectively, to mean— Terms defined.

Paragraph 1. The act.—The United States warehouse act, approved August 11, 1916 (39 U. S. Stat. at L. pp. 446, 486), as amended. The act.

Par. 2. Person.—An individual, corporation, partnership, or two or more persons having a joint or common interest. Person.

Par. 3. Department.—The United States Department of Agriculture. Department.

Par. 4. Secretary.—The Secretary of Agriculture of the United States. Secretary.

Par. 5. Designated representative.—The chief of the bureau. Designated representative.

Par. 6. Chief of the bureau.—The Chief of the Bureau of Agricultural Economics. Chief of the bureau.

Par. 7. Bureau.—The Bureau of Agricultural Economics of the United States Department of Agriculture. Bureau.

Par. 8. Regulations.—Rules and regulations made under the act by the Secretary. Regulations.

Par. 9. Dockage.—Dockage in grain as defined by the official grain standards of the United States. Dockage.

Grain.

Par. 10. Grain.—All products commonly classed as grain, such as wheat, corn, oats, barley, rye, flaxseed, rough, brown, and milled rice, sunflower seeds, field peas, soybeans, emmer, grain sorghums, and such other products as are ordinarily stored in grain warehouses, subject to the disapproval of the chief of the bureau.

Nonstorage grain.

Par. 11. Nonstorage grain.—Grain received temporarily into a warehouse for conditioning, transferring, assembling for shipment, or lots of grain moving through a warehouse for current merchandising or milling use, against which no receipts are issued and no storage charges assessed, provided that merchandising or milling stocks held in storage as reserve stocks, or stored for use at an indefinite future date, may not be treated as nonstorage grain.

Warehouse.

Par. 12. Warehouse.—Unless the context otherwise clearly indicates, any building, structure, or other protected inclosure licensed or to be licensed under the act, in which grain is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States in which grain is or may be stored.

Bin.

Par. 13. Bin.—A bin, tank, interstice, or other container in a warehouse in which bulk grain may be stored.

Warehouseman.

Par. 14. Warehouseman.—Any person lawfully engaged in the business of storing grain, who holds an effective warehouseman's license under the act, or who has applied for such a license.

License.

Par. 15. License.—A license issued under the act by the Secretary, or his designated representative.

Warehouseman's bond.

Par. 16. Warehouseman's bond.—The bond required by the act to be given by a warehouseman.

Inspector.

Par. 17. Inspector.—A person licensed under the act by the Secretary, or his designated representative, to inspect and grade and/or certificate the grade of grain stored or to be stored in a warehouse licensed under the act.

Weigher.

Par. 18. Weigher.—A person licensed under the act by the Secretary, or his designated representative, to weigh and/or certificate the weight of grain stored or to be stored in a warehouse licensed under the act.

Grain standards act.

Par. 19. Grain standards act.—The United States grain standards act, approved August 11, 1916 (39 U. S. Stat. at L. pp. 446, 486).

Official grain standards of the United States.

Par. 20. Official grain standards of the United States.—The standards of quality or condition for grain, fixed and established by the Secretary under the grain standards act.

Receipt.

Par. 21. Receipt.—A licensed warehouse receipt issued under the act.

Regulation 2. Warehouse Licenses

Application form.

SECTION 1. Applications for licenses and for amendments of licenses under the act shall be made to the Secretary upon prescribed forms furnished by the bureau, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary, or his designated representative, shall find to be necessary to the consideration of his application.

Scales.

SEC. 2. *Paragraph 1.* Each warehouse must be equipped with suitable scales in good order, and so arranged that all grain, whether for storage or for nonstorage purposes, can be weighed in and out of the warehouse. The scales in any warehouse shall be subject to examination by representatives of the department and to disapproval by the chief of the bureau. If he disapproves any weighing apparatus, it shall not thereafter be used in ascertaining the weight of grain for the purposes of this act, until such disapproval be withdrawn.

Bins, compartments, etc., to be numbered in an approved manner.

Par. 2. Both bulk grain bins and compartments for sacked grain of all warehouses licensed under the act shall be identified by means of clearly discernible numbers securely affixed thereto. The series of numbers to be used shall be approved by the bureau

Bulk grain bins shall be numbered so as to be easily identified at the openings on top and also on or near the outlet valves underneath. Compartments shall be numbered in such a manner as to clearly show the space covered by each number.

Signs of tenancy to be posted.

SEC. 3. *Paragraph 1.* Every warehouseman operating a "field" or "custodian" warehouse shall, during the life of his license, display and maintain appropriate signs on the licensed warehouse, both on the inside and on the exterior walls of the warehouse, and particularly on doors and usual places of entry, in such a manner as will ordinarily be calculated to give the public correct notice of his tenancy of all buildings or parts thereof included in his license.

Wording of signs.

PAR. 2. Such signs shall be of such size and design as to readily attract the attention of the public and shall include the following: (*a*) The name and license number of the licensee, (*b*) the name of the warehouse, (*c*) whether the warehouseman is owner or lessee, and (*d*) the words "public warehouse."

Other wording permitted.

PAR. 3. Such other wording or lettering may appear in the sign or signs not inconsistent with the purpose of the act and these regulations as may be approved by the chief of the bureau.

Signs to be removed upon expiration or suspension of license.

PAR. 4. Immediately upon its expiration or suspension or revocation all reference to the license shall be removed from the warehouse.

Other signs prohibited.

PAR. 5. No sign indicating control, tenancy, or ownership of a licensed warehouse by any person other than the licensee shall appear on any such warehouse.

Net assets.

SEC. 4. *Paragraph 1.* The warehouseman conducting a warehouse for which application for license has been made, shall have and maintain, above all exemptions and liabilities, net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least 10 cents per bushel of its licensed grain storage capacity, determined in accordance with regulation 8, section 2, paragraph 1, except that the amount of such assets shall not be less than $5,000 and need not be more than $100,000. In case buildings, machinery, or merchandise are included among such assets, the warehouseman shall procure and maintain insurance fully to protect such property against loss or damage by fire. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business, and subject to service of process in suits brought in the State where the warehouse is located.

Assets for two or more warehouses.

PAR. 2. In case such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purpose of the assets required under this section, and such warehouseman shall have and maintain above all exemptions and liabilities, net assets adequately protected by insurance against loss or damage by fire, liable for the payment of any indebtedness arising from the conduct of any of such warehouses, to the extent of at least 10 cents per bushel of their aggregate grain storage capacity except that the amount of such assets need not be more than $100,000.

Deficiency.

PAR. 3. For the purpose of paragraphs 1 and 2 of this section only, capital stock, as such, shall not be considered a liability. A deficiency in assets may be supplied by an increase in the amount of the warehouseman's bond equal to such deficiency.

Grounds for not issuing license.

SEC. 5. A license for the conduct of a warehouse, or any amendment to a license, shall not be granted if it is found by the Secretary, or his designated representative, that the warehouse is not suitable for the proper storage of grain, that the warehouseman does not possess a good reputation or is insolvent or incompetent to conduct such warehouse in accordance with the act and these regulations; that the warehouseman has failed to comply with these regulations, or that there is any other sufficient reason within the purposes of the act for not issuing such license.

License or extension shall be posted.

SEC. 6. Immediately upon receipt of his license or of any modification or extension thereof under the act, the warehouseman shall post same, and thereafter, except as otherwise provided in these regulations, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.

Suspension or revocation of warehouse licenses.

SEC. 7. Pending investigation, the Secretary, or his designated representative, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary, or his designated representative, may, without hearing, suspend or revoke the license issued to such warehouseman. The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, revoke a license issued to a warehouseman when such warehouseman (*a*) is bankrupt or insolvent; (*b*) has parted, in whole or in part, with his control over the licensed warehouse; (*c*) is in process of dissolution or has been dissolved; (*d*) has for any reason ceased to conduct such licensed warehouse; or (*e*) has in any other manner become incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in subdivisions (*a*) to (*e*) of this section shall come into existence, it shall be the duty of the warehouseman to notify immediately the chief of the bureau of the existing condition. Before a license is revoked for any violation of, or failure to comply with, any provision of the act or of these regulations, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with regulation 10, section 4.

Return of terminated, suspended, or revoked warehouse license.

SEC. 8. In case a license issued to a warehouseman terminates or is suspended or revoked by the Secretary, or his designated representative, such license shall be immediately returned to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the warehouseman to whom it was originally issued and it shall be posted as prescribed in section 6 of this regulation: *Provided*, That in the discretion of the Secretary, or his designated representative, a new license may be issued without reference to the suspension.

Lost or destroyed warehouse license.

SEC. 9. Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof, or a new license may be issued under the same number.

Unlicensed warehousemen must not represent themselves as licensed.

SEC. 10. No warehouse or its warehouseman shall be designated as licensed under the act, and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise, unless such warehouseman holds an unsuspended and unrevoked license for the conduct of such warehouse.

Regulation 3. Warehouse Bonds

Time of filing

SECTION 1. Unless the warehouseman has previously filed with the Secretary the necessary bond required by section 2 of this regulation, he shall file such bond within a time, if any, specified by the Secretary, or his designated representative, said bond to cover all obligations arising thereunder during the period of the license.

Amount based on storage capacity.

SEC. 2. *Paragraph 1.* Exclusive of any amount which may be added in accordance with paragraphs 2 and 3 of this section, the amount of such bond shall be fixed at the rate of 5 cents per bushel of the maximum number of bushels that the warehouse will accommodate when stored in the manner customary to the

warehouse for which such bond is required, as determined by the chief of the bureau, but not less than $5,000 nor more than $50,000. In case a warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the act and these regulations, such warehouses shall be deemed to be one warehouse for the purposes of the bond required under this regulation. The amount of said bond shall be fixed at the rate of 5 cents per bushel of the maximum number of bushels that all of said warehouses will accommodate when stored in the manner customary to each of such warehouses for which such bond is required, as determined by the chief of the bureau, but not less than $5,000 nor more than $50,000.

Bond covering two or more warehouses.

Par. 2. In case of a deficiency in net assets, there shall be added to the amount fixed in accordance with paragraph 1 of this section an amount equal to such deficiency.

Additional amount for deficiency in net assets.

Par. 3. In case the Secretary, or his designated representative, finds the existence of conditions warranting such action, there shall be added to the amount fixed in accordance with paragraph 1 of this section a further amount to meet such conditions.

Additional amount for special conditions.

SEC. 3. In case an application is made for an amendment to a license and no bond previously filed by the warehouseman under this regulation covers obligations arising during the period covered by such amendment, the warehouseman shall, when notice has been given by the Secretary, or his designated representative, that his application for such amendment will be granted upon compliance by such warehouseman with the act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the act. In the discretion of the Secretary, or his designated representative, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the act and these regulations, may be filed in lieu of a new bond.

Extension bond.

SEC. 4. A continuous form of license shall not remain in force for more than one year from its effective date, or any subsequent extension thereof, unless each year prior to the date on which the license would expire, the warehouseman files a bond in the required amount with the Secretary and such bond has been approved by him or his designated representative.

New bond required to continue license beyond one year.

SEC. 5. No bond, amendment, or continuation thereof shall be accepted for the purposes of the act and these regulations until it has been approved by the Secretary, or his designated representative.

Approval of bond.

Regulation 4. Warehouse Receipts

SECTION 1. *Paragraph 1.* Every receipt, whether negotiable or nonnegotiable, issued for grain stored in a licensed warehouse shall, in addition to complying with the requirements of section 18 of the act, embody within its written or printed terms the following: (*a*) The name of the warehouseman and the designation, if any, of the warehouse, (*b*) a statement whether the warehouseman is incorporated or unincorporated, and if incorporated, under what laws, (*c*) in event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship, (*d*) a statement conspicuously placed, whether or not the grain is insured, and, if insured, to what extent, by the warehouseman against loss by fire, lightning, tornado, or otherwise, (*e*) the net weight, including dockage, if any, of the grain, (*f*) in the case of grain the identity of which is to be preserved, its identification or location in accordance with section 13 of regulation 5, (*g*) the words "Not Negotiable," or "Negotiable," according to the nature of the receipt, clearly and conspicuously printed or stamped thereon, and (*h*) that the holder of the re-

Contents of negotiable and nonnegotiable receipts.

ceipt or the depositor of the grain shall demand the delivery of the grain not later than the expiration of one year from the date of the receipt.

Storage period.

Par. 2. Every receipt, whether negotiable or nonnegotiable, issued for grain stored in a warehouse shall specify a period, not exceeding one year, for which the grain is accepted for storage under the act and these regulations. Upon demand and surrender of the old receipt by the lawful holder thereof at or before the expiration of the period specified, the warehouseman, upon such lawful terms and conditions as may be granted by him to other depositors of grain in his warehouse, if he then continues to act as a licensed warehouseman, may issue a new receipt for a further specified period, not exceeding one year; provided it is actually determined by a licensed inspector that the grain has not deteriorated and that it is in proper condition for storage for another year.

Additional contents of negotiable receipts.

Par. 3. Every negotiable receipt issued shall, in addition to conforming with the requirements of paragraph 1 of this section, embody within its written or printed terms, a form of indorsement which may be used by the depositor, or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on the grain covered by the receipt.

Grade of grain.

Par. 4. The grade stated in a receipt shall be stated in accordance with regulation 8, as determined by the inspector who last inspected and graded the grain before the issuance of such receipt, or if an appeal from the determinations of such inspector has been taken either under the grain standards act and regulations thereunder or under regulation 9 of these regulations, the grade shall be stated on such receipt in accordance with the grade as finally determined in such appeal. If the final grade thus determined be different from that shown by the receipt issued for such grain, the warehouseman shall, upon the return of the old receipt, if the same is not already in his possession, issue a new receipt stating such final grade.

When grade omitted receipt must be so marked.

Par. 5. If a warehouseman issues a receipt omitting the statement of grade on request of the depositor as permitted by section 18 of the act, such receipt shall have clearly and conspicuously stamped or written in the space provided for the statement of grade the words "Not graded on request of depositor."

Blank spaces in receipt to be filled in.

Par. 6. If a warehouseman issues a receipt under the act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made purposely by the warehouseman.

Grain must be inspected and weighed. Dockage must be stated.

SEC. 2. *Paragraph 1.* Except in case of identity preserved grain, when the grading is omitted at request of depositor, no receipt shall be issued under the act or these regulations until the grain covered by such receipt has been inspected and graded by a person duly licensed to inspect and grade such grain and to certificate the grade thereof, and been weighed by a person duly licensed to weigh such grain and to certificate the weight thereof. The receipt issued to cover such grain shall show the grade, including percentage of dockage, if any, condition, and weight, in conformity therewith.

Grading identity preserved grain must be omitted on depositor's request.

Par. 2. When requested by the depositor of grain the identity of which is to be preserved, a receipt omitting statement of grade but not weight may be issued.

Nonstorage grain shall be graded and weighed.

Par. 3. All fungible nonstorage grain received into and delivered out of a warehouse must be correctly inspected, graded, and weighed by a licensed inspector and/or weigher.

Copies of receipts.

SEC. 3. Any copies of receipts, except those issued in lieu of the original in case of lost or destroyed receipts, shall have clearly and conspicuously printed or stamped thereon the word "Copy—Not Negotiable." If exact copies are not made, skeleton copies bearing the same numbers as the corresponding original receipts bear, shall be made, but such skeleton copies need not be marked "Copy—Not Negotiable."

Lost or destroyed receipts.

SEC. 4. *Paragraph 1.* In the case of a lost or destroyed receipt, if there be no statute of the United States or law of a State applicable thereto, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate receipt issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph 2 of this section.

Affidavit of loss or destruction of receipts.

Par. 2. Before issuing such new or duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with him (*a*) an affidavit showing that the applicant is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and if lost, that diligent effort has been made to find the receipt without success, and (*b*) a bond in an amount double the value, at the time the bond is given, of the grain represented by the lost or destroyed receipt. Such bond shall be in a form approved for the purpose by the Secretary, or his designated representative, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such receipt, and shall have as surety thereon preferably a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the State in which the warehouse is located, or at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, equal to the amount of the bond.

Bond for lost receipts.

Approval of forms and printing of receipts.

SEC. 5. Receipts issued by a warehouseman shall be (*a*) in form prescribed by the chief of the bureau, (*b*) printed by a printer with whom the United States has a subsisting contract and bond for such printing, and (*c*) on distinctive paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.

Partial delivery of grain.

SEC. 6. If a warehouseman delivers a part only of a lot of grain for which he has issued a negotiable receipt under the act, he shall take up and cancel such receipt and issue a new receipt in accordance with these regulations for the undelivered portion of the grain. The new receipt shall show the date of issuance and also indicate the number and date of the receipt first issued.

Return of receipts before delivery.

SEC. 7. Except as permitted by law or by these regulations a warehouseman shall not deliver grain for which he has issued a negotiable receipt until the receipt has been returned to him and canceled, and shall not deliver grain for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written order therefor. Before delivery is made of the last portion of a lot of grain covered by a nonnegotiable receipt, the receipt itself shall be surrendered.

Persons to whom nonnegotiable receipts are issued must furnish warehouseman with names and signatures of parties empowered to make releases.

SEC. 8. Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize delivery of grain covered by such receipt, together with the bona fide signature of such person or persons. No licensed warehouseman shall honor an order for the release of grain covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release, and that the signature of the releasing party is genuine.

Warehouseman not to attempt to compel grade to be omitted.

SEC. 9. No warehouseman shall, directly or indirectly by any means whatsoever, compel or attempt to compel the depositor of any grain stored or offered for storage in his warehouse to request the issuance of a receipt omitting the statement of grade.

Loading out without weighing.

SEC. 10. When the lawful holder of one or more receipts covering an entire lot of identity preserved grain or a mass of grain stored in a single bin requests the warehouseman to deliver

said lot or mass without reweighing said grain, the warehouseman may make such delivery if there is an accurate record of the weight of such grain when received. Such deliveries shall be made only when the lawful holder of the receipts agrees to assume all shortages and other risks incidental thereto, and after the warehouse receipts covering all of the grain in the container have been surrendered to the warehouseman and canceled. After the receipts covering such grain have been surrendered for cancellation no other grain shall be placed in the bin until the entire lot has been delivered.

Persons authorized to sign receipts.

SEC. 11. Each warehouseman shall file with the department the name and genuine signature of each person authorized to sign warehouse receipts for the warehouseman, and shall promptly notify the department of any changes as to persons authorized to sign and shall file the signatures of such persons, and each warehouseman shall be bound by such signatures the same as if he had personally signed the receipt.

Weight and inspection certificates must be filed as basis for issuing receipts.

SEC. 12. Before issuing any receipt under the act each warehouseman shall, unless he personally weighed, inspected, and graded, if graded, a lot of grain, first obtain either a copy of or the original weight certificate, and inspection certificate, if any, covering said lot of grain, and said weight and grade certificates shall be filed as a permanent record in the warehouseman's office when the receipt is issued. The number of the warehouse receipt issued for the grain covered by such certificates shall be written on the certificate before filing.

Receipts to be issued for all stored grain.

SEC. 13. Receipts must be issued for all grain stored in a warehouse. Receipts need not be issued against nonstorage grain, but each warehouseman shall keep accurate records of the weights, kinds and grades of all lots of nonstorage grain received into and delivered from his warehouse. Whenever the purpose for which any lot of nonstorage grain was received into a warehouse is changed so that its approximate delivery period from the warehouse becomes indeterminate, receipts shall be issued to cover such grain.

Nonstorage grain records.

Receipts must be issued if it becomes stored.

Receipts shall not be issued for "screenings."

SEC. 14. No receipt shall be issued for any product or by-product which would fall under the term "screenings."

Canceled receipts to be forwarded to bureau for auditing.

SEC. 15. Each warehouseman, if requested by the bureau, shall forward his canceled receipts for auditing to such field offices of the bureau as may be designated from time to time.

Regulation 5. Duties of Warehouseman

Insurance against fire, lightning, or tornado.

SECTION 1. *Paragraph 1.* Each warehouseman, when so requested in writing as to any grain by the depositor thereof or lawful holder of the receipt covering such grain, shall, to the extent to which, in the exercise of due diligence, he is able to procure such insurance, keep such grain while in his custody as a warehouseman insured in his own name or arrange for its insurance otherwise to the extent so requested, against loss or damage by fire, lightning, and/or tornado. When insurance is not carried in the warehouseman's name, the receipts shall show that the grain is not insured by the warehouseman. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business, and subject to service of process in suits brought in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, orally or by telegraph or by telephone immediately notify the person making the request of the fact. Nothing in this section shall be construed to prevent the warehouseman from adopting a rule that he will insure all grain stored in his warehouse.

Must comply with insurance terms.

Par. 2. Each warehouseman shall comply fully with the terms of insurance policies or contracts covering his licensed warehouse and all products stored therein, and shall not commit any acts nor permit his employees to do anything, which might impair or invalidate such insurance.

Par. 3. Each warehouseman shall keep exposed conspicuously in the place prescribed by regulation 2, section 6, and at such other place as the chief of the bureau or his representative may from time to time designate, a notice stating briefly the conditions under which the grain will be insured against loss or damage by fire, lightning, and tornado. Notice regarding insurance to be posted.

Par. 4. Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of these regulations, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts. Premiums, inspections, and reports.

Par. 5. Each warehouseman shall promptly take such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of these regulations, and shall, as soon as collected, promptly pay to the persons concerned any portion of such moneys which they may be entitled to receive from him. Warehouseman to collect and pay over insurance.

Par. 6. If at any time a fire shall occur at or within any warehouse, it shall be the duty of the warehouseman to report immediately by wire to the chief of the bureau the occurrence of such fire and the extent of damage. Fire loss to be reported by wire

SEC. 2. Each warehouseman shall provide a fireproof safe, vault, or compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the licensed warehouse, including his current receipt book, copies of issued and canceled receipts, except that with the written consent of the bureau, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books and papers in some other place of safety, approved by the bureau. All canceled receipts shall be arranged by the warehouseman in numerical order as soon as possible after their cancellation and shall be preserved in numerical order thereafter. Records to be kept in safe place. Canceled receipts to be kept in numerical order.

SEC. 3. A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted under the act the warehouseman shall file with the department a copy of his rules and a schedule of charges to be made by him if licensed. Before making any change in such rules or schedule of charges he shall file with the department a statement in writing showing the proposed change and the reasons therefor. Each warehouseman shall keep exposed conspicuously in the place prescribed by regulation 2, section 6, and at such other place, accessible to the public, as the bureau may from time to time designate, a copy of his current rules and schedule of charges. Warehouse charges.

SEC. 4, *Paragraph 1.* Each warehouse shall be kept open for the purpose of receiving grain for storage and delivering grain out of storage every business day for a period of not less than six hours between the hours of 8 a. m. and 6 p. m. except as provided in paragraph 2 of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his licensed warehouse a notice showing the hours during which the warehouse will be kept open, except when such warehouse is kept open continuously from 8 a. m. to 6 p. m. Business hours.

Par. 2. In case the warehouse is not to be kept open as required by paragraph 1 of this section, the notice posted as prescribed in that paragraph shall state the period during which the warehouse is to be closed and the name of an accessible person, with the address where he is to be found, and the telephone number, if any, who shall be authorized to deliver grain stored in such warehouse, upon lawful demand by the depositor thereof or the holder of the receipt therefor, as the case may be. Closing of warehouses.

SEC. 5. Each warehouseman shall have and maintain a system of accounts, approved for the purpose by the bureau. This shall include a stock record showing for each lot of grain received for System of accounts.

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storage its net weight including dockage, if any, its grade when its grade is required to be, or is, ascertained, its location, the dates received for and delivered out of storage, the receipts issued and canceled, also a separate record for each depositor of his grain, which shall include a detailed record of all moneys received and disbursed and of all insurance policies taken out and canceled on request of each depositor. The warehouseman shall further keep a general insurance account showing the policy number, issuing company, amount, binding and expiration dates of all fire, tornado, and other insurance policies taken out by him and in each instance show the property covered by such policies. These records shall also show similar information concerning any nonstorage grain handled through the warehouse.

Record of nonstorage grain.

Reports if requested.

SEC. 6. *Paragraph 1.* Each warehouseman shall, from time to time, if requested by the bureau, make such reports, on forms prescribed and furnished for the purpose by the bureau, concerning the condition, contents, operation, and business of the warehouse.

Copies of reports to be kept.

Par. 2. Each warehouseman shall keep on file, as a part of the records of the warehouse, for such period as may be prescribed by the bureau, an exact copy of each kind of report submitted.

Inspections and examinations of warehouse.

SEC. 7. Each warehouseman shall permit any officer or agent of the department, authorized by the Secretary, or his designated representative, for the purpose, to enter and inspect or examine on any business day during the usual hours of business, any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and such warehouseman shall furnish such officer or agent the assistance necessary to enable him to make any inspection or examination under this section.

Care of grain in licensed warehouse.

SEC. 8. Each warehouseman shall at all times, including any period of suspension of his license, exercise such care in regard to grain in his custody as a reasonably careful owner would exercise under the same circumstances and conditions.

Care of other grain and other commodities.

SEC. 9. If, at any time, a warehouseman shall handle or store grain otherwise than as a licensed warehouseman, or shall handle or store any other commodity, he shall so protect the same, and otherwise exercise care with respect to it, as not to endanger the grain in his custody as a warehouseman or impair the insurance thereof or his ability to meet his obligations and perform his duties under the act and these regulations.

Excess storage.

SEC. 10. If at any time a warehouseman shall store grain in his warehouse in excess of the capacity for which it is licensed, such warehouseman shall immediately notify the bureau of such excess storage, the reason therefor, and the location thereof.

Removal of grain specially binned or stored for insurance purposes.

SEC. 11. Except as may be required by law or these regulations, a warehouseman shall not remove any grain for storage from the licensed warehouse or a part thereof in which it may be specially binned or stored for insurance purposes, and transfer the grain to another bin without first obtaining the receipt, cancelling the same and issuing a new receipt for said grain following its transfer.

Grades and weights according to which bulk grain shall be accepted and delivered.

SEC. 12. Each warehouseman shall accept all grain for storage and shall deliver out of storage all bulk grain, other than specially binned grain, in accordance with the grades of such grain as determined by a person duly licensed to inspect and grade such grain and to certificate the grade thereof and in accordance with the weights of such grain as determined by a person duly licensed to weigh such grain and to certificate the weight thereof under the act and these regulations; or if an appeal from the determination of an inspector has been taken, either under the grain standards act and regulations thereunder or under regulation 9 of these regulations, such grain shall be accepted for and delivered out of storage in accordance with the grades as finally determined in such appeal.

Storage of identity preserved grain.

SEC. 13. Upon the acceptance by a warehouseman for the storage in his warehouse, of any lot of grain the identity of which is to be preserved, he shall store, or cause to be stored, such grain in an individual bin or compartment identified by clearly distinguishable numbers or letters permanently and securely affixed thereto, or shall so mark the lot or the bags of such grain or so place them in the warehouse that the identity of the grain will not be lost during the storage period, and his records shall clearly show the location of such grain in the warehouse.

Sacked grain to be kept piled in orderly manner.

SEC. 14. Each warehouseman shall keep sacked grain stored in an orderly manner so as to permit easy access to all lots and to facilitate inspecting, sampling, counting, and identification of each lot.

All warehouses to be kept clean.

SEC. 15. Each warehouseman shall keep his warehouse reasonably clean at all times and free from straw, rubbish, or accumulations of materials that will increase the fire hazard or interfere with the handling of grain.

Delivery of fungible grain.

SEC. 16. Except as may be provided by law or these regulations, each warehouseman, (*a*) upon proper presentation of a receipt for any grain other than identity stored grain, and which grain has not at the request of the depositor or lawful holder of the receipt covering such grain or otherwise as permitted by law or these regulations, been dried or otherwise conditioned by such warehouseman, and upon payment of tender of all advances and legal charges, shall deliver to such depositor or lawful holder of such receipt grain of the grade and quantity named in such receipt; and (*b*) upon proper presentation of a receipt for any grain the identity of which was to have been preserved during the storage period, and upon payment or tender of all advances and legal charges, shall deliver to the person lawfully entitled thereto, the identical grain so stored in his warehouse.

Delivery of identity preserved grain.

Cleaning of grain. Dockage set to cover shrinkage.

SEC. 17. Each warehouseman whose warehouse is equipped with machinery suitable for the purpose, shall clean all bulk grain received for storage in such warehouse, on which the inspector at the request of the depositor or lawful holder of the receipt covering such grain has set dockage for cleaning.

Grades must be kept separate in storage.

SEC. 18. A warehouseman may not mix lots of different grades of grain stored or received for storage except when the identity of the grain to be stored is to be preserved or when a depositor surrenders receipts covering two or more lots and requests the warehouseman to deliver the amount of grain represented by the canceled receipts in such a manner that they will become one lot. The balance, if any, of grain resulting from this operation, after weighing and inspecting, is to be stored with grain of like grade or its identity preserved.

Mixing on delivery.

Overage to be weighed and inspected before restoring.

Stocks must be kept in balance by grades with receipts.

SEC. 19. Warehouseman must keep stocks of grain in storage by grades in balance with the grades of grain represented by outstanding receipts, except when the grain has unavoidably improved or deteriorated through natural causes. In case the grades of stored grain should get out of balance with grades represented by outstanding receipts, the warehouseman shall effect proper adjustments.

Grain out of condition to be stored specially binned or first conditioned.

SEC. 20. *Paragraph 1.* If the condition of any grain offered for storage is such that it probably will affect the condition of grain in the licensed warehouse, the warehouseman shall not receive such grain for storage or store such grain in his licensed warehouse, but, if the warehouse has separate bins or is equipped with proper conditioning apparatus, he may receive such grain for storage in such separate bins or he may condition it and then store it in such manner as will not lower the grade of other grain.

Grain to be kept in same condition as when stored.

Par. 2. In case the warehouseman or the department shall find that storage of grain in direct contact with any part of the structure of a warehouse results, or is likely to result, in damage to the grain, the warehouseman shall not store grain in such part

of the warehouse except in such manner and by the use of such material as will keep the grain in the same condition as when stored.

Grain going out of condition.

Notice to interested parties.

May be reconditioned.

SEC. 21. In case the warehouseman considers that any portion of the grain in his warehouse is out of condition, or becoming so, he shall direct the inspector to examine the grain in question. If the inspector finds such grain to be out of condition or becoming so and he is of the opinion that by reelevating, screening, blowing, cooling, or drying the grain can be brought back into condition or that further deterioration can be prevented, such warehouseman shall give immediate notice of the fact to the persons and in the manner specified in section 22 of this regulation. If, within 24 hours after the giving of such notice, the owners of such grain have not otherwise directed as to the disposition of same, such warehouseman, with the approval of the inspector, shall, in his warehouse to the extent to which it is equipped with machinery suitable for the purpose, or may in another warehouse or elevator so equipped to the extent to which his warehouse is not equipped with suitable machinery, subject the grain to any or all of the above-mentioned processes.

Warehouseman shall give notice of grain out of condition.

SEC. 22. *Paragraph 1.* If the warehouseman with the approval of the inspector, shall determine that the further deterioration of any grain can not be prevented by reconditioning, or after treating it in accordance with section 21 of this regulation, it is still out of condition, the warehouseman shall give immediate notice of the fact, in accordance with paragraphs 2 and 3 of this section.

Contents of notice.

Par. 2. Such notice shall state (*a*) the warehouse in which the grain is stored, (*b*) the quantity, kind, and grade, if determined, of the grain at the time the notice is given, (*c*) the actual condition of the grain as nearly as can be ascertained, and the reason, if known, for such condition, (*d*) the oldest outstanding receipts covering the amount of grain out of condition, other than sacked or specially binned grain, upon which the grain will be delivered, giving the number and date of each such receipt and the quantity, the kind, and grade of the grain as stated in such receipts or (*e*) the outstanding receipts covering the grain out of condition the identity of which was to have been preserved, giving the number and date of each such receipt and the designation of the bin, container or location of such grain as stated in the receipt therefor, and (*f*) that such grain will be delivered upon the return and cancellation of the receipts therefor.

Persons to whom notice shall be sent.

Par. 3. A copy of such notice shall be delivered in person or shall be sent by mail (*a*) to the persons holding the oldest receipts covering the grain in question mentioned in subdivisions (*d*) and (*e*) of paragraph 2 of this section if known to the warehouseman, (*b*) to any other person, including the persons mentioned in paragraph 4 of this section, known by the warehouseman to be interested in the grain, (*c*) to the grain exchange, board of trade, or chamber of commerce, if any, in the city or town in or nearest to which the warehouse is located, and (*d*) to the chief of the bureau. If the holders of the receipts and the owners of the grain are known to the warehouseman and can not, in the regular course of the mails, be reached within 12 hours, the warehouseman shall, whether or not requested so to do in accordance with paragraph 4 of this section, also immediately notify such persons by telegraph or telephone at their expense.

Notice to be posted.

Public notice shall also be given by posting a copy of such notice in a conspicuous place in the main office of the warehouse where receipts are issued.

Record of persons interested in receipt or grain.

Par. 4. Any person, interested in any grain or the receipt covering such grain stored in a warehouse, may, in writing, notify the warehouseman conducting such warehouse, of the fact and nature of his interest, and such warehouseman shall keep a record of the fact. If such person requests, in writing, that he be notified regarding the condition of any such grain and agrees to pay the

cost of any telegraph or telephone toll charge, such warehouseman shall notify such person in accordance with such request.

Par. 5. Nothing contained in this section shall be construed as relieving the warehouseman from properly caring for any grain after notification of its condition in accordance with this section. Warehouseman not relieved from properly caring for grain at all times.

SEC. 23. If the grain, advertised in accordance with the requirements of section 22 of this regulation, has not been removed from storage by the owner thereof within 10 days from the date of notice of its being out of condition, the warehouseman in whose warehouse such grain is stored may sell the same at public auction at the expense and for the account of the owner after giving 10 days' notice in the manner specified in paragraph 3 of section 22 of this regulation. Grain may be sold at public auction after notice.

SEC. 24. Subject to the provisions of section 13 of the act, a licensed warehouseman may elect not to receive grain for storage the identity of which is to be preserved while in storage. Acceptance of identity preserved grain optional.

Regulation 6. Fees

SECTION 1. There shall be charged, assessed, and collected a fee of $10 for each original or amended warehouseman's license applied for by a warehouseman, and a fee of $3 for each license, or amendment thereto, issued to an inspector and/or weigher. License fees.

SEC. 2. There shall be charged, assessed, and collected for each original examination or inspection of a warehouse under the act, when such examination or inspection is made upon application of a warehouseman, a fee at the rate of $2 for each 10,000 bushels of the grain storage capacity, or fraction thereof, determined in accordance with regulation 3, section 2, paragraph 1, but in no case less than $10 nor more than $200, and, for each reexamination or reinspection, applied for by such warehouseman, a fee, based on the extent of the reexamination or reinspection, proportioned to, but not greater than, that prescribed for the original examination or inspection. Warehouse inspection fee.

SEC. 3. Before any warehouseman's license, or amendment thereto, or any inspector's and/or weigher's license, is granted, or original examination or inspection, or reexamination or reinspection applied for by a warehouseman, is made, pursuant to these regulations, the warehouseman and/or inspector or weigher shall deposit with the bureau the amount of the fee prescribed. Such deposit shall be made in the form of a check, certified if required by the bureau, draft, or post office or express money order, payable to the order of "Treasurer of the United States." Advance deposit.

SEC. 4. The Treasurer of the United States shall hold in his custody each advance deposit made under this regulation until the fee, if any, is assessed and he is furnished by the bureau with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing same. Return of excess deposit.

Regulation 7. Inspectors and Weighers

SECTION 1. *Paragraph 1.* Application for licenses to inspect and grade or to weigh grain under section 11 of the act shall be made to the chief of the bureau on forms furnished for the purpose by him. Each application shall be in English, shall be signed by the applicant, and shall contain or be accompanied by a statement from the warehouseman for whom the applicant will inspect, grade or weigh grain under the act, showing whether the applicant is competent and is acceptable to such warehouseman for the purpose. Inspector's and weigher's application.

Par. 2. Each inspector's application shall contain (a) evidence that he can correctly grade grain in accordance with the official standards of the United States, or in the absence of such stand- Contents of inspector's application.

ards in accordance with any standards approved by the chief of the bureau, (*b*) that he has passed his twenty-first birthday, (*c*) satisfactory evidence that he will be provided with such means or facilities for inspecting and grading grain as may be deemed necessary, for use in the locality in which the applicant expects to perform services as a licensed inspector.

Inspectors licensed under Grain Standards Act.

Par. 3. In lieu of compliance with the requirements of paragraph 2 of this section, the license applied for may be granted whenever such applicant furnishes satisfactory evidence that he holds an effective license under the Grain Standards Act and regulations thereunder, to inspect and grade such grain and to certificate the grade thereof.

Contents of weigher's application.

Par. 4. Applications for licenses to weigh grain shall be on forms furnished for the purpose by the chief of the bureau and shall give such information as will show the applicant's experience in weighing grain.

Combined inspector's and weigher's application.

Par. 5. A single application may be made by any person for a license as both inspector and weigher upon complying with the requirements of this section.

Applicant must furnish additional information if requested.

Par. 6. An applicant shall at any time furnish such additional information as the department shall find to be necessary to the consideration of his application.

Examination of applicants and licensees.

SEC. 2. Each applicant for license as an inspector or weigher and each inspector or weigher shall, whenever requested by an authorized agent of the department, submit to an examination or test to show his ability properly to inspect and grade or to weigh grain.

Posting of licenses.

SEC. 3. Each inspector or weigher shall keep his license conspicuously posted in a place designated for the purpose by the bureau.

Duties of inspector and weigher.

SEC. 4. Each inspector and each weigher whose license remains in effect shall, without discrimination, as soon as practicable, and upon reasonable terms, inspect and grade or weigh and certificate the grade or weight of grain, stored or to be stored in a warehouse, for which he holds a license, if such grain be offered to him under such conditions as permit proper inspection and weighing and the determination of the grade or weight thereof. No inspector shall issue a certificate of grade for any grain unless the inspection and grading thereof be based upon a correct and representative sample of the grain.

Inspection certificates to be based on representative sample.

Inspection certificate.

SEC. 5. *Paragraph 1.* Except as provided in paragraph 2 of this section, each inspection certificate issued under the act by an inspector shall be in a form approved for the purpose by the department, and shall embody within its written or printed terms: (*a*) The caption "United States Warehouse Act, Grain Inspection Certificate," (*b*) whether it is an original, a duplicate, or other copy, and that it is not negotiable, (*c*) the name and location of the warehouse in which the grain is or is to be stored, (*d*) the date of the certificate, (*e*) the consecutive number of the certificate, (*f*) the approximate amount of grain covered by the certificate, (*g*) the kind of grain covered by the certificate, (*h*) the grade of the grain, as determined by such licensed inspector, in accordance with regulation 8, and, in the case of grain for which no official grain standards of the United States are in effect, the standard or description in accordance with which such grain is graded, (*i*) that the certificate is issued by an inspector licensed under the United States warehouse act and the regulations thereunder, (*j*) a statement conspicuously placed to the effect that the certificate is not valid for the purposes of the United States Grain Standards Act, and (*k*) the signature of the inspector who inspected and graded the grain. In addition, the inspection certificate may include any other matter not inconsistent with the act or these regulations, provided the approval of the bureau is first secured.

Inspection certificate under grain standards act valid for purposes of act.

Par. 2. In lieu of the inspection certificate provided for in the preceding paragraph, each inspector, who holds an unsuspended and unrevoked license under the grain standards act and regulations thereunder to inspect and grade any grain and to

certificate the grade thereof for shipment or delivery for shipment in interstate or foreign commerce, shall, unless otherwise requested as to any such grain by the owner or depositor thereof, issue a certificate of grade covering such grain in accordance with the grain standards act and regulations thereunder. Such grain shall be deemed to be inspected and graded and such certificate of grade shall be deemed to be an inspection certificate for the purposes of the act and these regulations.

Copies of inspection certificate to be made accessible to interested parties.

SEC. 6. Each inspector shall, as soon as possible after grading any grain and not later than the close of business on the next following business day, make accessible to the parties interested in a transaction in which the grain is involved at the place designated in section 3 of this regulation a true copy of the inspection certificate issued by him for such grain, or a record of each lot or parcel of grain inspected and graded by such licensed inspector showing the information contained on such inspection certificate.

Weight certificates.

SEC. 7. Each weight certificate issued under the act by a weigher shall be in a form approved for the purpose by the bureau, shall embody within its written or printed terms: (*a*) The caption "United States Warehouse Act, Grain Weight Certificate," (*b*) whether it is an original, a duplicate, or other copy, and that it is not negotiable, (*c*) the name and location of the warehouse in which the grain is or is to be stored, (*d*) the date of the certificate, (*e*) the net weight, including dockage, if any, of the grain, (*f*) that the certificate is issued by a weigher licensed under the United States warehouse act and the regulations thereunder, and (*g*) the signature of the weigher. In addition, the weight certificate may include any other matter not inconsistent with the act or these regulations, subject to the approval of the bureau.

Combined inspection and weight certificate.

SEC. 8. The grade and weight of any grain, ascertained by an inspector and a weigher, may be stated on a certificate meeting the combined requirements of sections 5 and 7 of this regulation, if the form of such certificate shall have been approved for the purpose by the bureau.

Copies of certificates to be kept.

SEC. 9. Each inspector and each weigher shall keep for a period of one year in a place accessible to interested parties a copy of each certificate issued to him under these regulations, and shall file a copy of each such certificate with the warehouse in which the grain covered by the certificates is stored.

Inspectors and weighers to permit examination of records and to assist department representative in making examinations.

SEC. 10. Each inspector and each weigher shall permit any authorized officer or agent of the department to inspect or examine, on any business day during the usual hours of business, his books, papers, records, and accounts relating to the performance of his duties under the act and these regulations, and shall, with the consent of the warehouseman concerned, assist any such officer or agent in the inspection or examination mentioned in section 7 of regulation 5 as far as any such inspection or examination relates to the performance of the duties of such inspector or weigher under the act and these regulations.

Reports.

SEC. 11. Each inspector and each weigher shall, from time to time, if requested by the bureau, make reports, on forms approved for the purpose by the bureau, bearing upon his activities as such inspector or weigher.

Suspensions or revocations of inspector's or weigher's licenses.

SEC. 12. Pending investigation, the Secretary, or his designated representative, may, whenever he deems necessary, suspend the license of an inspector or weigher temporarily without hearing. Upon a written request or a satisfactory statement of reasons therefor, submitted by the inspector or weigher, the Secretary, or his designated representative, may, without hearing, suspend or revoke the license issued to such inspector or weigher. The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, suspend or revoke a license issued to an inspector or

a weigher when such licensee, (*a*) has ceased to perform services as such inspector or weigher, or (*b*) has in any other manner become incompetent or incapacitated to perform the duties of such inspector or weigher. As soon as it shall come to the attention of a warehouseman that either of the conditions mentioned under (*a*) or (*b*) exists, it shall be the duty of such warehouseman to notify the bureau in writing. Before the license of any inspector or weigher is suspended or revoked pursuant to section 12 of the act, such inspector or weigher shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with regulation 10, section 4.

Return of suspended or revoked inspector's and weigher's licenses.

SEC. 13. *Paragraph 1.* In case a license issued to an inspector or a weigher is suspended or revoked by the Secretary, or his designated representative, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless in the meantime it be revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the inspector or weigher to whom it was originally issued and it shall be posted as prescribed in section 3 of this regulation.

Inspector's and weigher's licenses automatically terminate with warehouse license.

Par 2. Any license issued, under the act and these regulations, to an inspector or weigher shall automatically terminate as to any warehouse whenever the license of such warehouse shall be revoked or suspended. Thereupon the license of such inspector or weigher shall be returned to the department. In case such license shall apply to other warehouses, the Secretary, or his designated representative, shall issue to him a new license, omitting the names of the warehouses covering which licenses have been so revoked or suspended. Such new license shall be posted as prescribed in section 3 of this regulation.

Lost or destroyed inspector's and weigher's licenses.

SEC. 14. Upon satisfactory proof of the loss or destruction of a license issued to an inspector or weigher, a duplicate thereof may be issued under the same number, in the discretion of the Secretary, or his designated representative.

Unlicensed inspectors and weighers must not represent themselves as licensed.

SEC. 15. No person shall in any way represent himself to be an inspector or weigher licensed under the act unless he holds an unsuspended and unrevoked license issued under the act.

Regulation 8. Grain Grading

Grades to be stated according to this regulation.

SECTION 1. Whenever the grade of grain is required to be or is stated for the purpose of the act or these regulations, it shall be stated in accordance with this regulation.

Official grain standards of the United States adopted.

SEC. 2. The official grain standards of the United States are hereby adopted as the official grain standards for the purposes of the act and these regulations.

Standards of grades for other grain.

SEC. 3. Until grades for any kind of grain are officially promulgated by the Secretary, the grade of grain, for which no official grain standards of the United States are in effect, shall be stated (*a*) in accordance with the State standards, if any, established in the State in which the warehouse is located, (*b*) in the absence of any State standards, in accordance with the standards, if any, adopted by the local board of trade, chamber of commerce, or by the grain trade generally in the locality in which the warehouse is located, subject to the approval of the bureau, or (*c*) in the absence of the standards mentioned in subdivisions (*a*) and (*b*) of this section, in accordance with any standards approved for the purpose by the bureau.

Grades to be based on representative sample and proper inspection.

SEC. 4. Whenever the grade of grain is required to be or is stated for the purposes of the act or these regulations, it shall be based upon a correct and representative sample of the grain and the inspection and grading thereof shall be made under conditions which permit the determination of its true grade.

Regulation 9. Grain Appeals

Who may appeal.

SECTION 1. In case a question arises as to the true grade of grain, stored or to be stored in a warehouse, for which official grain standards of the United States are in effect and for which a grain inspection certificate has been issued in accordance with regulation 7, section 4, any interested party may take an appeal for the determination of the true grade of such grain.

Complaint.

SEC. 2. In order to take such an appeal a complaint in writing in accordance with section 3 of this regulation shall be filed, in the office of Federal Grain Supervision in the district in which the inspection appealed from was made, not later than the close of business on the second business day following the date the grading was performed as shown by the record required by regulation 7, section 6.

Contents of complaint.

SEC. 3. Such complaint shall be in English and shall state (*a*) the name and post office address of the complainant, (*b*) the names and post office addresses of all other parties interested in the grain involved, or if no other parties are named, why not, (*c*) the name and location of the licensed warehouse in which the grain is or is to be stored, (*d*) the identification and the location of the grain at the time of taking the appeal, (*e*) if samples have been agreed upon and are submitted in accordance with paragraph 2 of section 7 of this regulation, a statement thereof, and (*f*) such other information as may be required by the office of Federal Grain Supervision in which such complaint is filed or by the chief of the bureau. Such complaint shall be signed by the complainant and may be signed by any one or more or all of the parties interested in such appeal. An appeal taken in conformity with the grain standards act and regulations thereunder shall be deemed to be an appeal for the purposes of this regulation.

Proof of agent's authority.

SEC. 4. In case a complaint is filed under this regulation by a person purporting to act in behalf of another person, the grain supervisor in charge of the office of Federal Grain Supervision in which such complaint is filed, or the chief of the bureau, may, if he considers necessary, require proof of the authority of such person to file the complaint.

Certificate of inspection and receipt to be surrendered.

SEC. 5. The complainant shall file or cause to be filed in the office of Federal Grain Supervision mentioned in section 2 of this regulation, with the complaint or before the issuance of the grade memorandum in the appeal, the inspection certificate for the grain involved issued by the inspector from whose inspection the appeal is taken together with the receipt, if any, covering such grain. If such inspection certificate be in the custody or control of the inspector he shall upon request immediately transmit or deliver it to said office.

Extension of time for filing complaint.

SEC. 6. Upon a showing of the discovery of fraud or other good cause for an extension of time the grain supervisor in charge of the office mentioned in section 2 of this regulation may permit the filing of a complaint or sample after the time prescribed therefor in these regulations, and a statement of such appeal by the official making the same.

Basis for determining appeal.

SEC. 7. *Paragraph 1.* No appeal taken under this regulation shall be determined except upon the basis of a representative sample or samples of the grain involved.

Agreed samples may be submitted.

Par. 2. The complainant may submit representative samples of the grain involved which have been agreed upon by the warehouseman in whose warehouse the grain is or is to be stored and the interested parties, other than such warehouseman, or have been drawn by a disinterested person selected for the purpose by the warehouseman and such parties.

Samples to be drawn by authorized person.

Par. 3. If samples which have been submitted pursuant to paragraph 2 of this section be deemed unsatisfactory, or if such samples be not submitted, a representative sample or samples of the grain involved shall be drawn by a person authorized for the

purpose by the bureau or the grain supervisor in charge of the office of Federal Grain Supervision in which the appeal is heard; and the complainant or the warehouseman shall have the grain made accessible and placed under such conditions as to permit the taking of a representative sample.

Transmittal of sample.

SEC. 8. Samples of grain involved in an appeal shall be delivered in person or transmitted by express or parcel post to the office of Federal Grain Supervision in which the appeal is filed.

What constitutes representative samples.

SEC. 9. For the purposes of an appeal under this regulation no sample shall be deemed to be representative unless it comply with the following requirements:

Size of sample.

Paragraph 1. It shall be at least 2 quarts in size, of which at least 1½ pints shall be inclosed in a clean, airtight container and the remainder, if any, in a clean cloth sack.

How to obtain sample.

Par. 2. Samples shall be taken from as many different portions of the lot or parcel, in accordance with the instructions of the bureau or the grain supervisor in charge of the office mentioned in section 2 of this regulation, as will show an average of the lot or parcel.

Sample portions to be mixed.

Par. 3. The grain taken from the different portions of a lot or parcel shall be thoroughly mixed, and such mixtures, or a typical portion thereof, otherwise complying with this regulation, shall constitute a sample of the entire lot or parcel.

Statement on damaged grain in sample.

Par. 4. In case any portion of a lot or parcel of grain is sour, musty, excessively wet, heating, hot, fire burnt, infested with live weevil or other insects injurious to stored grain, or otherwise of distinctly low quality, separate samples otherwise complying with this regulation shall be taken, respectively, from such portion and from the remaining portion. There shall be filed with such samples a statement showing the estimated quantity of each portion of the grain from which each such sample was taken.

Penalty for concealing inferior grain.

Par. 5. In case it shall appear that a lot or parcel of grain has been so loaded or handled as intentionally to conceal evidently inferior grain, a sample of such inferior grain, otherwise complying with this regulation, shall constitute a sample of the entire lot or parcel.

When appeal may be dismissed.

SEC. 10. The grain supervisor in charge of an office of Federal Grain Supervision in which an appeal is filed may dismiss such appeal without its determination; (*a*) upon request of the complainant, (*b*) if it be found that the appeal was not taken in good faith, (*c*) for noncompliance with these regulations, or (*d*) because sufficient evidence is not available upon which to determine the true grade of the grain.

Samples to be examined and grade certificate issued.

SEC. 11. The sample or samples of the grain involved in an appeal complying with this regulation shall be examined as soon as possible, such tests shall be applied as are necessary, and except as provided in Section 10 of this regulation a grade certificate shall be issued by the grain supervisor hearing the appeal, showing the grade assigned by him to such grain. Such grade certificate shall supersede the inspection certificate for the grain involved. Immediately upon the issuance of a grade certificate under this section the original thereof, together with any receipt covering such grain filed in the appeal, shall be sent to the licensed warehouseman concerned and a copy shall be sent to the licensed inspector and to each other person shown by the record of the appeal to be interested therein.

Persons to whom copies of grade certificate shall be sent.

Fees

SEC. 12. *Paragraph 1.* The minimum fee in an appeal shall be $1 if it involve the grade of grain in a wagon or in a lot of 25 sacks or less. In any other appeal the minimum fee shall be $1.50.

When the total fee in any appeal at the rates specified below in this paragraph would amount to more than the minimum, the fee in the appeal shall be fixed as follows:

For bulk or sacked grain in carload lots, $1.50 per car;

For bulk or sacked grain in wagon lots, $1 per wagon;

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C.

Amendment No. 1 to Service and Regulatory Announcements No. 127 (A.M.S.)

Amendment to the Regulations for Warehousemen Storing Grain under the United States Warehouse Act

Pursuant to the authority vested in the Secretary of Agriculture by the United States Warehouse Act, approved August 11, 1916 (39 Stat. 490; 7 U.S.C. 268), the Regulations of the Secretary of Agriculture for Warehousemen Storing Grain, S. R. A.-B. A. E. 127, approved May 9, 1931 (Part 102 of Title 7 of the Code of Federal Regulations), are hereby amended (1) by striking out the words "Bureau of Agricultural Economics" wherever they appear in said regulations and inserting in lieu thereof the words "Agricultural Marketing Service"; and (2) by striking out the word "Bureau" wherever it appears in said regulations and inserting in lieu thereof the word "Service".

These regulations shall continue in effect and be administered by the Agricultural Marketing Service.

Done at Washington, D. C., this 6th day of July, 1939. Witness my hand and the seal of the Department of Agriculture.

Secretary of Agriculture

Amend. No. 2 to S. R. A. 127 (B.A.E.)-A.M.S.

WAR FOOD ADMINISTRATION
Office of Marketing Services
Washington 25, D. C.

Amendment No. 2 to Service and Regulatory Announcements No. 127
Amendment to the Regulations for Warehousemen Storing Grain
Under the United States Warehouse Act.

The following regulations of the Regulations for Warehousemen Storing Grain were amended on November 15, 1939, to read as follows:

Regulation 11, Section 3 (Section 102.105) "The chief of the Service may approve as registrar of warehouse receipts issued for grain in licensed elevators operating in any terminal market or in any futures contract market the official designated by the State in which such market is located, if such an official position has been created by law, or any other individual, provided such individual is not an employee of, or the owner of, any such licensed elevator, or the owner of, or an employee of the owner of, grain deposited in any such licensed elevator."

Regulation 11, Section 9 (Section 102.111) "Sections 102.103-102.111 (Reg. 11) apply only to warehousemen operating in such markets as may have been heretofore or may be hereafter designated as futures contract markets, and Sections 102.103-102.107 (Reg. 11, Secs. 1-5) apply also to warehousemen operating in such markets as the Department may view as terminal markets, and the appointment heretofore or hereafter of a Registrar of warehouse receipts, as provided in Section 102.105 (Reg. 11, Sec. 3) is conclusive that the Department views such market as a terminal market for purposes of the Warehouse Act. All other regulations issued under the Act and applicable to grain warehousemen shall apply to warehousemen operating in such terminal or futures contract markets except as such regulations may conflict with this regulation."

Amend. No. 3 to S.R.A. 127 (B.A.E.)-A.M.S.

UNITED STATES DEPARTMENT OF AGRICULTURE
Production and Marketing Administration
WASHINGTON 25, D. C.

Amendment No. 3 to Service and Regulatory Announcements No. 127

Amendment to the Regulations for Warehousemen Storing Grain Under the United States Warehouse Act

The following regulations of the Regulations for Warehousemen Storing Grain were amended in July 1941, to read as follows:

Reg. 5 Sec. 13 Storage of identity-preserved grain. Upon acceptance for storage of bulk grain the identity of which is to be preserved, the warehouseman shall store such grain in a bin or bins, a compartment or compartments, or other container or containers identified by clearly distinguishable identification insignia permanently and securely affixed thereto, subject to such control by the Department as may seem administratively necessary to protect depositors or holders of receipts. If the grain is received in bags or other suitable containers, such bags or containers shall be so marked and so placed in the warehouse that the identity of the grain will not be lost while in storage. The warehouseman's records shall at all times clearly show the location of all identity-preserved grain stored in the warehouse.

Reg. 7 Sec. 9 Copies of certificates to be kept. Each inspector and each weigher shall keep for a period of one year in a place accessible to interested parties a copy of each certificate issued by him under these regulations, and shall file a copy of each such certificate with the warehouse in which the grain covered by the certificates is stored.

For bulk or sacked grain in other than in carload or wagon lots, 50 cents per 1,000 bushels or fraction thereof, except as provided in the first sentence of this section.

Par. 2. Such further charges may be made for telegraph and telephone toll charges, express, parcel post, registry fees, and for other items paid or incurred by the department on account of a dispute or an appeal, and for drawing and submitting samples required by this regulation, including such traveling expenses, if any, incurred in accordance with the fiscal regulations of the department as the chief of the bureau may deem proper. Further charges.

Par. 3. The fees and expenses fixed in accordance with this section shall be assessed against the complainant. Fees and expenses assessed against complainant.

SEC. 13. *Paragraph 1.* If required by the grain supervisor in charge of the office of Federal Grain Supervision in which the complaint is filed or by the chief of the bureau, the complainant shall make an advance deposit to cover the expenses payable by him under section 12 of this regulation. Such deposit shall be in an amount fixed by such grain supervisor or the chief of the bureau and shall be in the form of a check, certified if required by the chief of the bureau, or a post office or express money order payable to the order of "Treasurer of the United States." Additional sums may be required by the official hearing the appeal when deemed necessary by him as advance deposits. In case an appeal be sustained, the amount of the fee assessed shall be refunded. As soon as possible after the determination of an appeal in connection with which any such advance deposit shall have been made, the chief of the bureau shall furnish the Treasurer of the United States with a statement of all fees and expenses chargeable against such advance deposits. Thereupon the Treasurer of the United States shall return to the person making the advance deposit as much thereof as shall not be required for the payment of such expenses. Advance deposits. Fee refunded if appeal sustained.

Par. 2. All fees not covered by advance deposits shall be payable immediately upon service of the original or a copy of the grade certificate of the grain supervisor and shall be paid by check, certified if required by the chief of the bureau, or post office or express money order, drawn to the order of "Treasurer of the United States," or in cash to the Treasurer of the United States. Fees, how paid.

Par. 3. In case an appeal is not sustained, all sums assessed as fees and expenses against such advance deposits and all sums collected and received by the Treasurer of the United States in payment of such fees and expenses shall be deposited and covered into the Treasury of the United States as miscellaneous receipts. Fees and expenses for appeals not sustained.

SEC. 14. Samples of grain submitted in appeals under this regulation, or such portions thereof as have not been used in determining the grade and the containers of such samples may, after the expiration of one month be used for the purposes of the department or disposed of in accordance with the property regulations of the department and the proceeds, if any, covered into the Treasury of the United States as miscellaneous receipts, or may, at any time in the discretion of the chief of the bureau be returned to the party by whom they were filed or his agent at his expense. Disposition of samples.

SEC. 15. No rule, regulation, by-law, or custom of any market, board of trade, chamber of commerce, exchange, inspection department or similar organization, nor any contract, agreement, or understanding, shall be ground for refusing to hear and determine any appeal taken under this regulation. No ground for refusing an appeal.

SEC. 16. No person, licensed under the act, shall, directly or indirectly by any means whatsoever, deter or prevent or attempt to deter or prevent any party from taking an appeal under this regulation. No person shall prevent any party from taking an appeal.

Regulation 10. Miscellaneous

Regulations applicable to State warehouses.

SECTION 1. Every person applying for a license, or licensed under section 9 of the act, shall, as such, be subject to all portions of these regulations, except regulation 2, section 4, so far as they may relate to warehousemen. In case there is a law of any State providing for a system of warehouses owned, operated or leased by such State, a person applying for a license under section 9 of the act, to accept the custody of grain and to store the same in any of said warehouses, may, in lieu of a bond or bonds, complying with regulation 3, sections 1 and 2, file with the Secretary, or his designated representative, a single bond meeting the requirements of the act and these regulations, in such form, and in such amount not less than $5,000 as he shall prescribe, to insure the performance by such person, with respect to the acceptance of the custody of grain and its storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any amendments thereto. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State and its liability with respect to such warehouses. If the Secretary, or his designated representative, shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed, a further amount, fixed by him, to meet such conditions.

Publications.

SEC. 2. Publications under the act and these regulations shall be made in such media as may be deemed proper by the chief of the bureau.

Information of violation of act and regulations.

SEC. 3. Every person licensed under the act shall immediately furnish the department any information which comes to the knowledge of such person tending to show that any provision of the act or these regulations has been violated.

Procedure in hearings.

SEC. 4. For the purpose of a hearing under the act or these regulations, except regulation 9, the licensee involved shall be allowed a reasonable time, fixed by the Secretary, or his designated representative, within which affidavits and other proper evidence may be submitted. If requested by the licensee within such time, an oral hearing, of which reasonable notice shall be given, shall be held before, and at a time and place fixed by, the Secretary, or his designated representative. The testimony of the witnesses at such oral hearings shall be upon oath or affirmation administered by the official before whom the hearing is held, when required by him. Such oral hearing may be adjourned by him from time to time. After reasonable notice to all parties concerned, the deposition of any witness may be taken at a time and place and before a person designated for the purpose by the Secretary, or his designated representative. Every written entry in the records of the Department of Agriculture made by an officer or employee thereof in the course of his official duty, which is relevant to the issue involved in a hearing, shall be admissible as prima facie evidence of the facts stated therein without the production of such officer or employee. Copies of all papers and all the evidence submitted or considered in such hearing shall be made a part of the records of the department. The records, and when there has been an oral hearing other than by the Secretary, the recommendation of the official holding such oral hearing shall be transmitted to the Secretary for his consideration. Each party shall pay all expenses contracted by him in connection with any hearing under this section.

One document and one license to cover several products.

SEC. 5. A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report or other paper, document or proceeding relating to such

warehouse, shall be sufficient unless otherwise directed by the chief of the bureau.

Amount of assets and bond needed for combination warehouses.

SEC. 6. Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the chief of the bureau in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity of the warehouse was used for its storage.

Amendments.

SEC. 7. Any amendment to these regulations, unless otherwise stated herein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the act.

Regulation 11

(Applicable only to warehousemen in terminal and futures contract markets)

Futures market defined.

SECTION 1. For the purpose of this regulation a futures contract market is any grain market designated as a futures contract market under authority of the Commodity Exchange Act.

Weighers' licenses may be issued to market weighmaster and deputies.

SEC. 2. Licenses to weigh grain into, out of, and within licensed warehouses, receipts of which are deliverable in satisfaction of futures contracts, may be issued to the weighmaster and his deputies of such contract market.

State registrar may be approved as Federal registrar.

SEC. 3. The chief of the bureau may approve as registrar of warehouse receipts issued for grain in licensed elevators operating in a futures contract market the official designated by the State in which such contract market is located, if such an official position has been created by law, or any other individual provided such individual is not an employee of, or the owner of, any such licensed elevator.

Grain inspectors' licenses may be issued to State inspectors.

SEC. 4. Licenses may be issued to employees of the grain inspection department of any State or any other agency to inspect and to certificate the grade of grain moving into, out of, or within, the licensed elevators.

Chief sampler of market may be licensed.

SEC. 5. Licenses may be issued to a chief sampler or his deputies in any market to sample and to inspect grain stored or to be stored in any licensed warehouse in a specified market for the purpose of determining the storability of the grain, subject to the act and the regulations thereunder. Should a difference of opinion exist between any licensed warehouseman, the licensed sampler or any party having an interest in the grain, an appeal may be filed within 24 hours with the chief of the bureau who shall appoint three disinterested persons to serve as an appeals committee and the findings of this committee shall be final and binding on all parties.

Condition of grain may be appealed.

Additional bond required of terminal warehousemen.

SEC. 6. In addition to the financial responsibility and the bonding requirements of Regulations 2 and 3, such additional bond shall be required for the protection of the public as will make the bonded responsibility of each licensed warehouseman equal to the maximum amount of bond required for nonlicensed warehousemen by the exchange, board of trade, or other agency within said market in which the licensed warehouseman is operating.

Exchange Committee may accompany Federal examiners in inspecting warehouses.

SEC. 7. Annually or more frequently if desired, a duly authorized committee of any exchange or board of trade that has been designated as a contract market may enter any warehouse operating under these regulations, when accompanied by United States warehouse examiners, to observe the official examination of the warehouse; or such committee may participate in the making of such examination, under the supervision and direction of the United States warehouse examiner in charge. The committee shall be afforded full knowledge of the quantities, kinds, grades, and condition of all grain in the warehouse. The committee may also with the warehouse examiners have access to the warehouseman's records of receipts, fire insurance, weights, and grades. In lieu of an

examination by any committee of the exchange or board of trade the Department of Agriculture will furnish, if desired; to the secretary of the exchange or board of trade a summarized statement of its findings of conditions at each licensed warehouse operating within the market.

All warehouse receipts shall be registered in contract market.

SEC. 8. When a contract market designates any agency for the registration of public warehouse receipts and such agency is approved as provided for in Section 3 of this regulation, all warehouse receipts shall be registered with the registrar and any change in ownership of a warehouse receipt shall be reported to the registrar by the owner thereof, giving his name and address to the registrar. All registered receipts shall be entitled to the following protection:

Precautions to protect receipts covering grain going out of condition.

(a) Whenever any licensed warehouseman considers that any grain stored in his warehouse is out of condition, or becoming so, and should be loaded out in order to protect the interests of the parties concerned, such warehouseman shall notify the registrar and the chief of bureau, giving the location, approximate quantity, grades, and condition of such grain, and the specific reason which makes loading out necessary. The registrar shall immediately notify the chief sampler, if there be one, otherwise the chief inspector, of the contract market who shall at once proceed to the warehouse in which the grain is stored and examine it, in conjunction with the licensed warehouseman. If the chief sampler, or chief inspector, agrees with the warehouseman that the grain should be loaded out, he shall so notify the registrar and the chief of the bureau. If the chief sampler does not agree with the warehouseman, the latter shall have the right to appeal to the chief of bureau who shall appoint an appeals committee as provided in Section 5. If, on such appeal, the warehouseman is sustained, the registrar shall be notified and such warehouse receipts as are selected as herein provided shall no longer be regular for delivery in satisfaction of futures contracts made under the rules and regulations of such contract market.

If grain must be loaded, oldest receipts to be selected first for surrender.

The registrar shall thereupon select the oldest registered warehouse receipt for grain of the grade involved and such additional next oldest registered warehouse receipts in the order of their issuance as may be necessary to equal the total quantity of the grain involved, unless such grain has been stored "identity preserved," and shall notify such holder or holders or their agents and the president of the contract market of the condition of the grain and the necessity for its being loaded out. When this information reaches the president of the contract market he shall appoint a committee consisting of five disinterested handlers of cash grain and notify the chief of bureau of the appointment of said committee giving the name, address, and business of each member. Each member of said committee shall be subject to disapproval by the chief of bureau. If no exception is taken to the committee membership during the same business day by the chief of bureau, the committee shall meet at once, and after taking into consideration various factors that establish the value of the grade of grain called for by the receipts held by such owner or owners, shall determine the fair value of the grain on the basis of the market quotations for grain of the grade called for by the receipts on the day of the finding of the appeals committee that the grain should be loaded out, which price shall be paid to the owner or holder of each such receipt by the licensed warehouseman. If the price offered is not satisfactory to any such owner or holder, a committee appointed by the president of such contract market at the request of such owner or holder shall procure other offers for such grain and such offers shall be immediately reported to such owner or holder or to his agent. If the owner refuses to accept any such offers he shall have the 2 following business days to order and furnish facilities for loading such grain out of store and during this period the warehouseman shall be obliged to deliver the grain covered by the warehouse receipts, but not more than 3 days shall elapse after notification by

Appointment and approval of committee to establish value of grain.

the registrar to the holder of the receipts before satisfactory disposition shall have been made of the grain either by sale or by ordering out and furnishing facilities to load same, provided the amount of such grain does not exceed 100,000 bushels in any one elevator. If the amount of grain in question exceeds 100,000 bushels, the owner or owners of the warehouse receipts shall be allowed 48 hours of grace over and above the aforementioned 3 days for each 100,000 bushels or fraction thereof in excess of the first 100,000 bushels.

(b) In the event that the holder of the warehouse receipt or his agent fails to remove the grain or make other satisfactory disposition of same within the prescribed time it shall be held for his account and any loss in grade sustained shall likewise be for his account.

(c) Nothing in the foregoing provisions shall be construed as prohibiting the warehouseman from fulfilling contracts from other stocks under his control, subject to the United States warehouse act and regulations thereunder.

Applicability of this regulation.

SEC. 9. This regulation applies only to warehousemen operating in such markets as the Department of Agriculture may view as terminal markets or in such markets as may be designated as futures contract markets. All other regulations issued under the act and applicable to grain warehousemen shall apply to warehousemen operating in such terminal or futures contract markets except as such regulations may conflict with this regulation.

UNITED STATES WAREHOUSE ACT

[39 United States Statutes at Large, page 486, as amended July 25, 1919, February 23, 1923, and March 2, 1931.]

That this Act shall be known by the short title of "United States warehouse Act."

SEC. 2. That the term "warehouse" as used in this Act shall be deemed to mean every building, structure, or other protected inclosure in which any agricultural product is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which any agricultural product is or may be stored. As used in this Act, "person" includes a corporation or partnership or two or more persons having a joint or common interest; "warehouseman" means a person lawfully engaged in the business of storing agricultural products; and "receipt" means a warehouse receipt.

SEC. 3. That the Secretary of Agriculture is authorized to investigate the storage, warehousing, classifying according to grade and otherwise, weighing, and certification of agricultural products; upon application to him by any person applying for license to conduct a warehouse under this Act, to inspect such warehouse or cause it to be inspected; at any time, with or without application to him, to inspect or cause to be inspected all warehouses licensed under this Act; to determine whether warehouses for which licenses are applied for or have been issued under this Act are suitable for the proper storage of any agricultural product or products; to classify warehouses licensed or applying for a license in accordance with their ownership, location, surroundings, capacity, conditions, and other qualities, and as to the kinds of licenses issued or that may be issued for them pursuant to this Act; and to prescribe, within the limitations of this Act, the duties of the warehousemen conducting warehouses licensed under this Act with respect to their care of and responsibility for agricultural products stored therein.

SEC. 4. That the Secretary of Agriculture, or his designated representative, is authorized, upon application to him, to issue to any warehouseman a license for the conduct of a warehouse or warehouses in accordance with this Act and such rules and regulations as may be made hereunder: *Provided*, That each such warehouse be found suitable for the proper storage of the particular agricultural product or products for which a license is applied for, and that such warehouseman agree, as a condition to the granting of the license, to comply with and abide by all the terms of this Act and the rules and regulations prescribed hereunder.

SEC. 5. That each license issued under Sections 4 and 9 of this Act shall terminate as therein provided, or in accordance with the terms of this Act and the regulations thereunder, and may from time to time be modified or extended by a written instrument.

SEC. 6. That each warehouseman applying for a license to conduct a warehouse in accordance with this Act shall, as a condition to the granting thereof, execute and file with the Secretary of Agriculture a good and sufficient bond to the United States to secure the faithful performance of his obligations as a warehouseman under the terms of this Act and the rules and regulations prescribed hereunder, and of such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of agricultural products in such warehouse. Said bond shall be in such form and amount, shall have such surety or sureties, subject to service of process in suits on the bond within the State, District, or Territory in which the warehouse is located, and shall contain such terms and conditions as the Secretary of Agriculture may prescribe to carry out the purposes of this Act, and may, in the discretion of the Secretary of Agriculture, include the requirements of fire and/or other insurance. Whenever the Secretary of Agri-

culture, or his designated representative, shall determine that a previously approved bond is, or for any cause has become, insufficient, he may require an additional bond or bonds to be given by the warehouseman concerned, conforming with the requirements of this section, and unless the same be given within the time fixed by a written demand therefor the license of such warehouseman may be suspended or revoked.

SEC. 7. That any person injured by the breach of any obligation to secure which a bond is given, under the provisions of Sections 6 or 9, shall be entitled to sue on the bond in his own name in any court of competent jurisdiction to recover the damages he may have sustained by such breach.

SEC. 8. That upon the filing with and approval by the Secretary of Agriculture, or his designated representative, of a bond, in compliance with this Act, for the conduct of a warehouse, such warehouse may be designated as bonded hereunder; but no warehouse shall be designated as bonded under this Act, and no name or description conveying the impression that it is so bonded shall be used until a bond, such as provided for in Section 6, has been filed with and approved by the Secretary of Agriculture, or his designated representative, nor unless the license issued under this Act for the conduct of such warehouse remains unsuspended and unrevoked.

SEC. 9. That the Secretary of Agriculture, or his designated representative, may, under such rules and regulations as he shall prescribe, issue a license to any person not a warehouseman to accept the custody of agricultural products, and to store the same in a warehouse or warehouses owned, operated, or leased by any State, upon condition that such person agree to comply with and abide by the terms of this Act and the rules and regulations prescribed hereunder. Each person so licensed shall issue receipts for the agricultural products placed in his custody, and shall give bond, in accordance with the provisions of this Act, and the rules and regulations hereunder affecting warehousemen licensed under this Act, and shall otherwise be subject to this Act, and such rules and regulations, to the same extent as is provided for warehousemen licensed hereunder.

SEC. 10. That the Secretary of Agriculture, or his designated representative, may charge, assess, and cause to be collected a reasonable fee for every examination or inspection of a warehouse under this Act when such examination or inspection is made upon application of a warehouseman, and for each license issued to a warehouseman or to any person to classify, inspect, grade, sample, and/or weigh agricultural products stored or to be stored under the provisions of this Act, the Secretary of Agriculture, or his designated representative, may charge, assess, and cause to be collected a reasonable fee. All such fees shall be deposited and covered into the Treasury as miscellaneous receipts.

SEC. 11. That the Secretary of Agriculture, or his designated representative, may upon presentation of satisfactory proof of competency, issue to any person a license to inspect, sample, or classify any agricultural product or products, stored or to be stored in a warehouse licensed under this Act, according to condition, grade, or otherwise and to certificate the condition, grade, or other class thereof, or to weigh the same and certificate the weight thereof, or both to inspect, sample, or classify and weigh the same and to certificate the condition, grade, or other class and the weight thereof, upon condition that such person agree to comply with and abide by the terms of this Act and of the rules and regulations prescribed hereunder so far as the same relate to him.

SEC. 12. That any license issued to any person to inspect, sample, or classify, or to weigh any agricultural product or products under this Act may be suspended or revoked by the Secretary of Agriculture, or his designated representative, whenever he is satisfied, after opportunity afforded to the licensee concerned for a hearing, that such licensee has failed to inspect, sample, or classify, or to weigh any agricultural product or products correctly, or has violated any of the provisions of this Act or of the rules and regulations prescribed hereunder, so far as the same may relate to him, or that he has used his license or allowed it to be used for any improper purpose whatever. Pending investigation, the Secretary of Agriculture, or his designated representative, whenever he deems necessary, may suspend a license temporarily without hearing.

SEC. 13. That every warehouseman conducting a warehouse licensed under this Act shall receive for storage therein, so far as its capacity permits, any agricultural product of the kind customarily stored therein by him which may

be tendered to him in a suitable condition for warehousing, in the usual manner in the ordinary and usual course of business, without making any discrimination between persons desiring to avail themselves of warehouse facilities.

SEC. 14. That any person who deposits agricultural products for storage in a warehouse licensed under this Act shall be deemed to have deposited the same subject to the terms of this Act and the rules and regulations prescribed hereunder.

SEC. 15. That any fungible agricultural product stored for interstate or foreign commerce, or in any place under the exclusive jurisdiction of the United States, in a warehouse licensed under this Act shall be inspected and graded by a person duly licensed to grade the same under this Act.

SEC. 16. That every warehouseman conducting a warehouse licensed under this Act shall keep the agricultural products therein of one depositor so far separate from agricultural products of other depositors, and from other agricultural products of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the agricultural products deposited; but if authorized by agreement or by custom, a warehouseman may mingle fungible agricultural products with other agricultural products of the same kind and grade, and shall be severally liable to each depositor for the care and redelivery of his share of such mass, to the same extent and under the same circumstances as if the agricultural products had been kept separate, but he shall at no time while they are in his custody mix fungible agricultural products of different grades.

SEC. 17. That for all agricultural products stored for interstate or foreign commerce, or in any place under the exclusive jurisdiction of the United States, in a warehouse licensed under this Act original receipts shall be issued by the warehouseman conducting the same, but no receipts shall be issued except for agricultural products actually stored in the warehouse at the time of the issuance thereof.

SEC. 18. That every receipt issued for agricultural products stored in a warehouse licensed under this Act shall embody within its written or printed terms (a) the location of the warehouse in which the agricultural products are stored; (b) the date of issue of the receipt; (c) the consecutive number of the receipt; (d) a statement whether the agricultural products received will be delivered to the bearer, to a specified person, or to a specified person or his order; (e) the rate of storage charges; (f) a description of the agricultural products received, showing the quantity thereof, or, in case of agricultural products customarily put up in bales or packages, a description of such bales or packages by marks, numbers, or other means of identification and the weight of such bales or packages; (g) the grade or other class of the agricultural products received and the standard or description in accordance with which such classification has been made: *Provided*, That such grade or other class shall be stated according to the official standard of the United States applicable to such agricultural products as the same may be fixed and promulgated under authority of law: *Provided further*, That until such official standards of the United States for any agricultural product or products have been fixed and promulgated, the grade or other class thereof may be stated in accordance with any recognized standard or in accordance with such rules and regulations not inconsistent herewith as may be prescribed by the Secretary of Agriculture; (h) a statement that the receipt is issued subject to the United States warehouse Act and the rules and regulations prescribed thereunder; (i) if the receipt be issued for agricultural products of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; (j) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien: *Provided*, That if the precise amount of such advances made or of such liabilities incurred be at the time of the issue of the receipt unknown to the warehouseman or his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof shall be sufficient; (k) such other terms and conditions within the limitations of this Act as may be required by the Secretary of Agriculture; and (l) the signature of the warehouseman, which may be made by his authorized agent: *Provided*, That unless otherwise required by the law of the State in which the warehouse is located, when requested by a depositor of other than fungible agricultural products, a receipt omitting compliance with subdivision (g) of this section may be issued: *Provided, however*, The Secretary of Agriculture may in his

discretion require that such receipt have plainly and conspicuously embodied in its written or printed terms a provision that such receipt is not negotiable.

SEC. 19. That the Secretary of Agriculture is authorized, from time to time, to establish and promulgate standards for agricultural products by which their quality or value may be judged or determined: *Provided*, That the standards for any agricultural products which have been, or which in future may be, established by or under authority of any other Act of Congress shall be, and are hereby, adopted for the purposes of this Act as the official standards of the United States for the agricultural products to which they relate.

SEC. 20. That while an original receipt issued under this Act is outstanding and uncanceled by the warehouseman issuing the same no other or further receipt shall be issued for the agricultural product covered thereby or for any part thereof, except that in the case of a lost or destroyed receipt a new receipt, upon the same terms and subject to the same conditions and bearing on its face the number and date of the receipt in lieu of which it is issued, may be issued upon compliance with the statutes of the United States applicable thereto in places under the exclusive jurisdiction of the United States or upon compliance with the laws of any State applicable thereto in any place not under the exclusive jurisdiction of the United States: *Provided*, That if there be in such case no statute of the United States or law of a State applicable thereto such new receipts may be issued upon the giving of satisfactory security in compliance with the rules and regulations made pursuant to this Act.

SEC. 21. That a warehouseman conducting a warehouse licensed under this Act, in the absence of some lawful excuse, shall, without unnecessary delay, deliver the agricultural products stored therein upon a demand made either by the holder of a receipt for such agricultural products or by the depositor thereof if such demand be accompanied with (a) an offer to satisfy the warehouseman's lien; (b) an offer to surrender the receipt, if negotiable, with such indorsements as would be necessary for the negotiation of the receipts; and (c) a readiness and willingness to sign, when the products are delivered, an acknowledgment that they have been delivered if such signature is requested by the warehouseman.

SEC. 22. That a warehouseman conducting a warehouse licensed under this Act shall plainly cancel upon the face thereof each receipt returned to him upon the delivery by him of the agricultural products for which the receipt was issued.

SEC. 23. That every warehouseman conducting a warehouse licensed under this Act shall keep in a place of safety complete and correct records of all agricultural products stored therein and withdrawn therefrom, of all warehouse receipts issued by him, and of the receipts returned to and canceled by him, shall make reports to the Secretary of Agriculture concerning such warehouse and the condition, contents, operation, and business thereof in such form and at such times as he may require, and shall conduct said warehouse in all other respects in compliance with this Act and the rules and regulations made hereunder.

SEC. 24. That the Secretary of Agriculture is authorized to cause examinations to be made of any agricultural product stored in any warehouse licensed under this Act. Whenever, after opportunity for hearing is given to the warehouseman conducting such warehouse, it is determined that he is not performing fully the duties imposed on him by this Act and the rules and regulations made hereunder, the Secretary may publish his findings.

SEC. 25. That the Secretary of Agriculture, or his designated representative, may, after opportunity for hearing has been afforded to the licensee concerned, suspend or revoke any license to any warehouseman conducting a warehouse under this Act, for any violation of or failure to comply with any provision of this Act or of the rules and regulations made hereunder, or upon the ground that unreasonable or exorbitant charges have been made for services rendered. Pending investigation, the Secretary of Agriculture, or his designated representative, whenever he deems necessary, may suspend a license temporarily without hearing.

SEC. 26. That the Secretary of Agriculture from time to time may publish the results of any investigations made under Section 3 of this Act; and he shall publish the names and locations of warehouses licensed and bonded and the names and addresses of persons licensed under this Act and lists of all licenses terminated under this Act and the causes therefor.

SEC. 27. That the Secretary of Agriculture is authorized through officials, employees, or agents of the Department of Agriculture designated by him to examine all books, records, papers, and accounts of warehouses licensed under this Act and of the warehousemen conducting such warehouses relating thereto.

SEC. 28. That the Secretary of Agriculture shall from time to time make such rules and regulations as he may deem necessary for the efficient execution of the provisions of this Act.

SEC. 29. That in the discretion of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers; but the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this Act shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect. This Act shall not be construed so as to limit the operation of any statute of the United States relating to warehouses or to warehousemen, weighers, graders, inspectors, samplers, or classifiers now in force in the District of Columbia or in any Territory or other place under the exclusive jurisdiction of the United States.

SEC. 30. That every person who shall forge, alter, counterfeit, simulate, or falsely represent, or shall without proper authority use, any license issued by the Secretary of Agriculture, or his designated representative, under this Act, or who shall violate or fail to comply with any provision of Section [illegible] of this Act, or who shall issue or utter a false or fraudulent receipt or certificate, or change in any manner an original receipt or certificate subsequently to issuance by a licensee, or any person who, without lawful authority, shall convert to his own use, or use for purposes of securing a loan, or remove from a licensed warehouse contrary to this Act or the regulations promulgated thereunder, any agricultural products stored or to be stored in such warehouse and for which licensed receipts have been or are to be issued, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than $10,000, or double the value of the products involved if such double value exceeds $10,000, or imprisoned not more than ten years, or both, in the discretion of the court, and the owner of the agricultural products so converted, used, or removed may, in the discretion of the Secretary of Agriculture, be reimbursed for the value thereof out of any fine collected hereunder, by check drawn on the Treasury at the direction of the Secretary of Agriculture for the value of such products to the extent that such owner has not otherwise been reimbursed. That any person who shall draw with intent to deceive, a false sample of, or who shall willfully mutilate or falsely represent a sample drawn under this Act, or who shall classify, grade, or weigh fraudulently, any agricultural product stored or to be stored under the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof fined not more than $500, or imprisoned for not more than six months, or both, in the discretion of the court.

SEC. 31. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $50,000, available until expended, for the expenses of carrying into effect the provisions of this Act, including the payment of such rent and the employment of such persons and means as the Secretary of Agriculture may deem necessary in the city of Washington and elsewhere, and he is authorized, in his discretion, to employ qualified persons not regularly in the service of the United States for temporary assistance in carrying out the purposes of this Act, and out of the money appropriated by this Act to pay the salaries and expenses thereof.

SEC. 32. That if any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SEC. 33. That the right to amend, alter, or repeal this Act is hereby expressly reserved.

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